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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 57, No. 252

Thursday, December 31, 1992

Agency for Health Care Policy and Research
NOTICES
Privacy Act:
  Systems of records, 62810

Agency for Toxic Substances and Disease Registry
NOTICES
Privacy Act:
  Systems of records, 62820

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Forest Service
See Rural Electrification Administration
NOTICES
Agency information collection activities under OMB review, 62562

Animal and Plant Health Inspection Service
RULES
Agricultural quarantine and inspection services; user fees (United States), 62468
Plant-related quarantine, foreign:
  Potatoes from Canada; correction, 62468
PROPOSED RULES
Agricultural quarantine and inspection services, overtime; fee increase, 62485
Exportation and importation of animals and animal products:
  Cattle from Canada, 62501

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
  Linen Supply Institute of Greater New York, Inc., et al., 62584
National cooperative research notifications:
  UNIX International, Inc., 62584

Army Department
PROPOSED RULES
Privacy Act; implementation, 62531
NOTICES
Environmental statements; availability, etc.:
  Base realignments and closures—
    Fort Ord, CA, 62570

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Privacy Act:
  Systems of records, 62811

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
  Discretionary program, 62860

Coast Guard
NOTICES
Committees; establishment, renewal, termination, etc.:
  Alternative voluntary advisory group certification in lieu of Regional Citizens' Advisory Council, 62600

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Technology Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 62568

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
  Costa Rica, 62566, 62567
  Hong Kong, 62567
  Taiwan, 62567

Commodity Credit Corporation
RULES
Loan and purchase programs:
  Grain and similarly handled commodities; farmer-owned reserve program—
    1992 crop wheat as collateral, 62473
PROPOSED RULES
Sugar assessments, 62486

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
  New York Mercantile Exchange—
    Liquefied propane gas, 62568

Comptroller of the Currency
RULES
Real estate appraisals:
  Real estate lending standards, 62890

Defense Department
See Army Department
See Navy Department
NOTICES
Meetings:
  Science Board task forces, 62570

Education Department
PROPOSED RULES
Postsecondary education:
  Higher Education Act and Amendments; negotiated rulemaking meetings, 62533

Energy Department

See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
  Livermore, CA, 62571

Environmental Protection Agency

PROPOSED RULES
Air pollutants, hazardous; national emission standards:
  Synthetic organic chemical manufacturing industry and seven other processes, 62608
Air pollution; standards of performance for new stationary sources:
  Appendix A; test methods 18, 26, and 26A, 62798
Air programs:
  Outer Continental Shelf regulations
    Consistency update, 62537
Air quality implementation plans; approval and promulgation; various States:
  Indiana, 62535
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  Metalaxyl, 62542
  Methyl methacrylate-2-sulfoethyl methacrylate-dimethylaminoethyl methacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer, 62540
NOTICES
Environmental statements; availability, etc.:
  Agency statements—
    Comment availability, 62572
    Weekly receipts, 62572
Meetings:
  Formaldehyde in new homes; testing, 62572
Pesticide programs:
  Confidential business information and data transfer to contractors, 62572

Executive Office of the President

See Presidential Documents

Federal Aviation Administration

RULES
VOR Federal airways, jet routes, and reporting points; correction, 62605

Federal Communications Commission

RULES
Common carrier services:
  Local telephone company facilities; expanded interconnection, 62481
Radio stations; table of assignments:
  Kansas, 62482
  Louisiana, 62483
  Minnesota, 62483
PROPOSED RULES
Common carrier services:
  GTE Corp.; enhanced services; open network architecture and nondiscrimination safeguards application, 62544
  International accounting rates; equivalency requirement to end user interconnections of private lines, 62543
Radio stations; table of assignments:
  Georgia, 62545
NOTICES
Agency information collection activities under OMB review, 62574

Federal Deposit Insurance Corporation

RULES
Real estate appraisals:
  Real estate lending standards, 62890
PROPOSED RULES
Assessments:
  Risk-based assessment system, 62502

Federal Election Commission

NOTICES
Meetings; Sunshine Act, 62604

Federal Energy Regulatory Commission

NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
  Tampa Electric Co., et al.; correction, 62605
Applications, hearings, determinations, etc.:
  Bald Eagle Power Co., Inc., 62571
  Baltimore Gas & Electric Co., 62571
  Trunkline Gas Co., 62572

Federal Maritime Commission

RULES
Passenger vessels:
  Financial responsibility requirements for nonperformance of transportation; self-insurance qualification standards, 62479

Federal Railroad Administration

PROPOSED RULES
Railroad power brakes and drawbars;
  Train and locomotive power braking systems; advanced technology use, 62546

Federal Reserve System

RULES
Real estate appraisals:
  Real estate lending standards, 62890

Fish and Wildlife Service

NOTICES
Endangered and threatened species:
  Recovery plans—
    Big Spring spinedace, 62580
Marine mammals:
  Polar bear, sea otter, and walrus in Alaska; management plans, 62580

Food and Drug Administration

NOTICES
Privacy Act:
  Systems of records, 62828

Forest Service

NOTICES
Environmental statements; availability, etc.:
  Gallatin National Forest, MT, 62562, 62564
  Stanislaus National Forest, CA, 62564, 62565

Geological Survey

NOTICES
Grant and cooperative agreement awards:
  FirstMiss Gold Inc., et al., 62581

Government Ethics Office

RULES
Conflict of interests; post-employment restrictions, 62467

Health and Human Services Department

See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See Public Health Service
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration

See Public Health Service
NOTICES
Privacy Act:
  Systems of records, 62825

Housing and Urban Development Department

NOTICES
Grants and cooperative agreements; availability, etc.:
  Facilities to assist homeless—
    Excess and surplus Federal property, 62575

Indian Health Service

NOTICES
Privacy Act:
  Systems of records, 62821

Interior Department

See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office
NOTICES
Central Utah Water Conservancy District:
  Environmental statements; availability, etc.—
    Colorado River Storage Project, 62575, 62576, 62577

Internal Revenue Service

PROPOSED RULES
Income taxes:
  Points paid on residential mortgages; recipient reporting requirements, 62526

International Trade Administration

NOTICES
Cheese quota; foreign government subsidies:
  Annual list, 62904

Justice Department

See Antitrust Division
NOTICES
Pollution control; consent judgments:
  Hanson, Charles V., III, 62585

Land Management Bureau

NOTICES
Meetings:
  Susanville District Grazing Advisory Board, 62578
Motor vehicles; off-road vehicle designations:
  California, 62578
Realty actions; sales, leases, etc.:
  Arizona, 62578, 62579
Withdrawal and reservation of lands:
  Oregon, 62579

Maritime Administration

NOTICES
Applications, hearings, determinations, etc.:
  Sea-Land Service, Inc., et al., 62601

Minerals Management Service

NOTICES
Outer Continental Shelf operations:
  Alaska—
    Lease sales, 62582

National Foundation on the Arts and the Humanities

NOTICES
Meetings:
  Presenting and Commissioning Advisory Panel, 62585

National Highway Traffic Safety Administration

NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
  Hackney & Sons, Inc., 62602

National Institute of Standards and Technology

NOTICES
Meetings:
  Fastener Quality Act Advisory Committee, 62565
  Weights and Measures National Conference, 62565

National Oceanic and Atmospheric Administration

NOTICES
Agency information collection activities under OMB review, 62565

National Science Foundation

NOTICES
Meetings:
  Continental Scientific Drilling Council, 62585
  Materials Research Special Emphasis Panel, 62585

Navy Department

NOTICES
Meetings:
  Chief of Naval Operations Executive Panel task forces, 62570, 62571

Nuclear Regulatory Commission

RULES
Criminal enforcement provisions; clarification:
  Correction, 62605
NOTICES
Meetings:
  Safety-related motor-operated valve testing and surveillance; generic letter, 62586

Personnel Management Office

RULES
Executive Branch employees; financial disclosure, qualified trusts, and divestiture certificates:
  Correction, 62605
Pay administration:
  Overtime pay provisions (Fair Labor Standards Act):
    Correction, 62605

Presidential Documents

EXECUTIVE ORDERS
Government employees:
  Pay and allowances; rates (EO 12826), 062909

Public Health Service

See Agency for Health Care Policy and Research

See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Privacy Act:
  Systems of records, 62810

Reclamation Bureau

NOTICES
Reclamation projects and project lands; revenue management, 62580

Rural Electrification Administration

PROPOSED RULES
Telecommunications standards and specifications for materials, equipment and construction; specifications for filled buried wires, 62490

Securities and Exchange Commission

NOTICES
Self-regulatory organizations; proposed rule changes:
  Government Securities Clearing Corp., 62586
  Options Clearing Corp., 62588
Applications, hearings, determinations, etc.:
  ASO Outlook Group et al., 62590
  Pacific Advisors Fund, Inc., et al., 62593
  Shearson Lehman Brothers Appreciation Fund Inc., et al., 62594

Selective Service System

PROPOSED RULES
Selective Service regulations; registrant processing procedures, 62533

Sentencing Commission, United States

See United States Sentencing Commission

Small Business Administration

RULES
Business loan policy:
  Unguaranteed portion of loan; pledging or sale, 62474
Small business size standards:
  Business loan program; alternate size standard criterion, 62477
PROPOSED RULES
Small business size standards:
  Fixed size standard levels, 62515

State Department

NOTICES
Meetings:
  Defense Trade Advisory Group, 62600

Substance Abuse and Mental Health Services Administration

NOTICES
Privacy Act:
  Systems of records, 62810

Surface Mining Reclamation and Enforcement Office

NOTICES
Agency information collection activities under OMB review, 62584

Technology Administration

NOTICES
Meetings:
  National Medal of Technology Nomination Evaluation Committee, 62566

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Thrift Supervision Office

RULES
Operations:
  Subsidiaries and service corporations; technical corrections, 62474
Real estate appraisals:
  Real estate lending standards, 62890

Toxic Substances and Disease Registry Agency

See Agency for Toxic Substances and Disease Registry

Transportation Department

See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
RULES
Organization, functions, and authority delegations:
  Research and Special Programs Administrator et al., 62483

Treasury Department

See Comptroller of the Currency
See Internal Revenue Service
See Thrift Supervision Office

United States Sentencing Commission

NOTICES
Sentencing guidelines for United States courts, 62832

Separate Parts In This Issue

Part II
Environmental Protection Agency, 62608

Part III
Department of Health and Human Services, Public Health Service, 62810

Part IV
United States Sentencing Commission, 62832

Part V
Department of Health and Human Services, Administration for Children and Families, 62860

Part VI
Federal Deposit Insurance Corporation; Federal Reserve System; Department of the Treasury, Comptroller of the Currency and Office of Thrift Supervision, 62890

Part VII
Department of Commerce, International Trade Administration, 62904

Part VIII
The President, 62909

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR

532	62605
550	62605
551	62605
2634	62605
2637	62467

7 CFR

321	62468
354	62468
1421	62473
Proposed Rules:	
354	62485
1435	62486
1755	62490

9 CFR

Proposed Rules:	
92	62501
97	62485

10 CFR

110	62605

12 CFR

34	62890
208	62890
365	62890
545 (2 documents)	62474, 62890
563	62890
Proposed Rules:	
327	62502

13 CFR

120	62474
121	62477
Proposed Rules:	
121	62515

14 CFR

71	62605

26 CFR

Proposed Rules:	
1	62526

32 CFR

Proposed Rules:	
505	62531
1636	62533

34 CFR

Proposed Rules:	
Ch. VI	62533

40 CFR

Proposed Rules:	
52	62535
55	62537
60	62798
63	62608
180 (2 documents)	62540, 62542

46 CFR

540	62479

47 CFR

61	62481
64	62481
65	62481
69	62481
73 (3 documents)	62482, 62483
Proposed Rules:	
Ch. I	62543
64	62544
73	62545

49 CFR

1	62483
Proposed Rules:	
232	62546

Rules and Regulations

Federal Register
Vol. 57, No. 252
Thursday, December 31, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2637

RIN 3209–AA14

Post-Employment Conflict of Interest Restrictions; Amendments

AGENCY: Office of Government Ethics.

ACTION: Final rule; amendments.

SUMMARY: Part 2637 of 5 CFR provides guidance concerning the post-employment restrictions set forth in the prior version of 18 U.S.C. 207 (1988) as they continue to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991, the effective date of statutory amendments enacted by the Ethics Reform Act of 1989. Since no former employee who terminated service before that date could any longer be subject to the prior version of either 18 U.S.C. 207 (b)(ii) or (c), this rule amends part 2637 to delete certain information relating to these two statutory provisions.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Julia Loring Eirinberg, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

Since 1980, 5 CFR part 2637 (formerly 5 CFR part 737) has provided guidance concerning the post-employment conflict of interest restrictions of 18 U.S.C. 207. The statutory restrictions were substantially revised by the Ethics Reform Act of 1989, Public Law No. 101–194, 103 Stat. 1716, with technical amendments enacted by Public Law No. 101–280, 104 Stat. 149 (1990). Employees who terminated Government service prior to January 1, 1991, the effective date of the Ethics Reform Act amendments, remain subject to the previous version of 18 U.S.C. 207. As a consequence, the Office of Government Ethics is continuing to publish part 2637 as guidance concerning that version of the statute.

Two sections of the previous version of 18 U.S.C. 207, § 207(b)(ii) and 207(c), applied only to so-called "Senior Employees." Section 207(b)(ii) was a two-year restriction against aiding or assisting in representing any other person by personal presence at an appearance by another, commencing upon an employee's termination from a Senior Employee position. Section 207(c) was a one-year restriction against the official generally contacting his or her former agency. Some employees were automatically Senior Employees by virtue of their rate of pay or pay grade, while others were Senior Employees by virtue of occupying positions designated as "Senior" by the Director of the Office of Government Ethics. The list of designated positions was periodically revised and then published in part 2637, most recently as reflected in § 2637.216 of title 5 of the 1992 edition of the CFR.

For one year after the termination of Senior service, 18 U.S.C. 207(c) restricted a Senior Employee from making certain communications or appearances before the department or agency in which he or she formerly served. The Director of the Office of Government Ethics had authority to take action to designate certain statutory or administratively created components so that the scope of the representational bar would be limited to less than the whole of a department or agency. The various statutory components were last listed in § 2637.214 of the 1992 edition of title 5 of the CFR, while the various administratively created components were last listed in 5 CFR 2637.215 of that edition.

As noted above, the previous version of 18 U.S.C. 207 continues to apply to employees who terminated Government service (or Senior service) prior to January 1, 1991. Thus, for example, these individuals continue to be subject to the permanent restriction set forth in section 207(a) of the law. However, since no former Senior Employee who terminated senior service prior to that date could any longer be subject to the one-year or two-year bars as of January 1, 1993, the separate agency and Senior Employee listings in §§ 2637.214, 2637.215 and 2637.216 of the regulation are being deleted from the CFR effective that date. We are adding notes to the three sections that will briefly explain the reason for the deletions.

The Office of Government Ethics has published substantive guidance concerning the current Ethics Reform Act version of 18 U.S.C. 207 in part 2641 of this chapter. This guidance includes a new definition of "senior employee" and a listing of component designations for purposes of the new version of section 207(c).

We have chosen not to delete the substantive discussions of prior section 207 (b)(ii) and (c) of 18 U.S.C. (nor of the generally applicable official responsibility two-year bar of section 207(b)(i) which is also expiring) appearing in sections of part 2637, largely because part 2641 of this chapter does not yet set forth comprehensive guidance in relation to the present version of prior paragraphs (b)(i) (now (a)(2)) and (c) of 18 U.S.C. 207. To the extent that the underlying statutory provisions remain unchanged, part 2637 remains persuasive concerning the interpretation of the newer, currently effective version of 18 U.S.C. 207, including section 207 (a)(2) and (c). Also, at least for the present, we have determined that the discussion of section 207(b)(ii) in part 2637 should continue to be published for its historical value.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice and delayed effective date are being waived because these amendments to the part 2637 regulation concern matters of agency organization, practice and procedure, and because they merely reflect the expiration of certain post-Government employment statutory restrictions.

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant impact on a substantial number of small entities because it only affects certain former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2637

Conflict of interests, Government employees.

Approved: December 22, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble and pursuant to its authority under the Ethics in Government Act, 18 U.S.C. 207, and Executive Order 12674 as modified by Executive Order 12731, the Office of Government Ethics is amending part 2637 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2637—[AMENDED]

1. The authority citation for 5 CFR part 2637 continues to read as follows:

Authority: 5 U.S.C. appendixes; 18 U.S.C. 207 (1988).

Subpart B—Substantive Provisions

2. Sections 2637.214, 2637.215 and 2637.216 are revised to read as follows:

§ 2637.214 Separate statutory agencies: Designations.

Note: Part 2637 provides guidance concerning the prior version of 18 U.S.C. 207 (1988) as it continues to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991. However, since no former "Senior Employee" who terminated service before that date could any longer be subject to the one-year restriction of section 207(c) of 18 U.S.C. as it existed prior to its amendment by the Ethics Reform Act of 1989, the listing of separate statutory agencies that previously appeared in § 2637.214 has been deleted.

§ 2637.215 Separate components of agencies or bureaus: Designations.

Note: Part 2637 provides guidance concerning the prior version of 18 U.S.C. 207 (1988) as it continues to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991. However, since no former "Senior Employee" who terminated service before that date could any longer be subject to the one-year restriction of section 207(c) of 18 U.S.C. as it existed prior to its amendment by the Ethics Reform Act of 1989, the listing of separate components that previously appeared in § 2637.215 has been deleted.

§ 2637.216 "Senior Employee" Designations.

Note: Part 2637 provides guidance concerning the prior version of 18 U.S.C. 207 (1988) as it continues to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991. However, since no former "Senior Employee" who terminated service before that date could any longer be subject to either the two-year restriction of section 207(b)(ii) or the one-year restriction of section 207(c) of 18 U.S.C. as they existed prior to their amendment by the Ethics Reform Act of 1989, the listing of "Senior Employee" positions that previously appeared in § 2637.216 has been deleted.

[FR Doc. 92-31753 Filed 12-30-92; 8:45 am]

BILLING CODE 6345-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 321

[Docket No. 91-038-4]

Importation of Potatoes From Canada; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting four errors in a final rule which amended the regulations concerning the importation of potato plants and tubers from Canada. The rule was necessary to prevent the introduction of the necrotic strain of potato virus Y (PVY^n) into the United States. The final rule was published in the **Federal Register** and effective on November 24, 1992 (57 FR 55047–55054, Docket No. 91-038-3).

EFFECTIVE DATE: November 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

§§ 321.2 and 321.9 [Corrected]

The following corrections in FR Doc. 92-28593, pages 55047–55054, read as follows:

1. On page 55053, third column, in § 321.2, definition of *Certified seed potatoes*, the word "six" is corrected to read "seven".

2. On page 55053, third column, in § 321.2, definition of *Foundation seed potatoes*, the word "five" is corrected to read "six".

3. On page 55054, first column, in § 321.9, paragraph (c) introductory text, the phrase "from New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec" is removed.

4. On page 55054, second column, in § 321.9, paragraph (d)(1), the words "level of" are added immediately before "1000 tubers".

Done in Washington, DC, this 28th day of December, 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-31862 Filed 12-30-92; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 354

[Docket No. 92-148-1]

User Fees—Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the user fee regulations by lowering the fees charged for certain agricultural quarantine and inspection services we provide in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of an international air passenger, commercial aircraft, or commercial vessel. We have determined that the inspection fees for international air passengers, commercial aircraft, and commercial vessels must be lowered to avoid collecting more revenue than needed to cover the costs of the services and, in the case of the international air passenger and commercial aircraft fees, to avoid exceeding a statutory cap on revenue collection. The lower fees will still be sufficient to recover the full costs of providing the inspection services.

DATES: Interim rule effective January 1, 1993. Consideration will be given only to comments received on or before February 1, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-148-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence

Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning user fees, contact Ms. Barbara L. Thompson, Chief, User Fee Branch, BAD, APHIS, USDA, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5901. For information concerning agricultural quarantine and inspection services, contact Mr. Don R. Thompson, Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.3 (referred to below as "the regulations") contain provisions for the collection of user fees for certain services provided by the Animal and Plant Health Inspection Service (APHIS). The user fees are intended to cover the cost of agricultural quarantine and inspection (AQI) services provided by APHIS in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of an international air passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car. (The customs territory of the United States is defined in the regulations as the 50 States, the District of Columbia, and Puerto Rico.)

APHIS received the authority to prescribe and collect user fees when the Food, Agriculture, Conservation, and Trade Act of 1990 (known as "the Farm Bill") was signed into law in November 1990. The Farm Bill was later amended by the Omnibus Budget Reconciliation Act of 1990 and the Food, Agriculture, Conservation, and Trade Act Amendments of 1991. The 1991 amendments, in part, placed limits on the amount of revenue that could be collected for airport inspection services (international air passenger and commercial aircraft) and commercial truck and railroad car inspection services in fiscal year (FY) 1992 and FY 1993.

The user fees for international air passengers, commercial vessels, commercial trucks, and railroad cars became effective on May 13, 1991, following the publication of a final rule in the **Federal Register** on April 12, 1991 (56 FR 14837–14846, Docket No. 91–028). They were set at $2 for international air passengers, $544 for commercial vessels, $2 for commercial trucks, and $7 for loaded commercial railroads cars. The user fee for commercial aircraft, set at $76.75, became effective on February 9, 1992, after a final rule was published in the **Federal Register** on January 9, 1992 (57 FR 755–773, Docket No. 91–135).

In both of those final rules, we stated that we intended to monitor the fees throughout the year and review them at least annually to determine whether the fees should be adjusted. After reviewing the fees that have already been collected and calculating our cost and revenue projections for FY 1992 and FY 1993, we have determined that, for the reasons discussed below, the fees for international air passengers, commercial aircraft, and commercial vessels need to be adjusted.

Calculation of User Fees

To calculate the adjusted user fees, we determined the total projected cost of providing AQI services in FY 1993 for international air passengers, commercial aircraft, and commercial vessels. The cost of providing these services in FY 1992 served as a basis for calculating our projected FY 1993 costs. It is important to note that each year in the budget process, Congress limits or specifies how much APHIS can withdraw from the AQI User Fee Account. For FY 1992, APHIS was authorized to spend $85.3 million from the AQI User Fee Account; for FY 1993, we have been authorized to spend $83.3 million. We project that our costs for clearing international air passengers, commercial aircraft, and commercial vessels will be lower in FY 1993 than in FY 1992.

In FY 1992, APHIS established accounting procedures to segregate AQI user fee program costs. We established distinct accounting codes to record costs that can be directly related to each inspection activity. At the area level and below, the following costs are direct-charged to the AQI User Fee Account: Salaries and benefits for inspectors and canine officers who perform three or fewer program activities during a pay period, and user-fee-specific equipment, contracts, and large supply items such as x-ray equipment or uniforms. We have determined that when an inspector works on four or more program activities in a pay period, the cost, in terms of the time spent on directly charging each activity and verifying the accuracy of the charges in the accounting system, outweighs the benefits gained by directly charging that time. We charge the salary and benefits for inspectors who work on four or more program activities in a pay period to "distributable" accounts established at the area level.

Many other costs cannot be directly charged to individual accounts. These costs are also charged to "distributable" accounts established at the area level. The following costs are charged to distributable accounts: Salaries and benefits for inspectors working on four or more program activities in a pay period and salaries and benefits for supervisors (such as officers-in-charge and assistant officers-in-charge) and clerical staff; leave (annual, sick, and holiday); all other costs not chargeable to a specific direct charge account (such as uniforms worn by officers who perform multiple AQI user fee activities and x-ray equipment used in Hawaii, where both AQI user fee and non-AQI user fee work is performed); and all costs incurred at area offices (i.e., salaries and benefits for area office personnel, utilities, rent, telephone, vehicles, office supplies, etc.). Depending on the activities supported by each office, costs that are direct-charged in one office may be charged to a distributable account in another office. For example, the cost of x-ray equipment purchased for one airport for use exclusively to inspect the baggage of international air passengers would be directly charged to an air passenger account, while the same equipment purchased for another airport that will use the equipment to x-ray baggage from passengers traveling internationally and between Hawaii and the U.S. mainland will be charged to a distributable account. The determining factor is whether the cost is directly attributable to an AQI user fee activity.

The costs in these distributable accounts are prorated (or distributed) among all the activities that benefit from the expense, based on the ratio of the costs that are directly charged to each activity divided by the total costs directly charged to each account at the field level. For example, if an area office performs work on domestic programs, AQI user fee programs, and AQI appropriated programs, the costs are distributed among each program, based on the percentage of the direct costs for that activity at the field level that is charged to that activity. Costs incurred at the regional, headquarters program staff, and agency-level support offices are also prorated to the separate AQI activities based on the percentage of the costs that were directly charged to each activity at the field level, as discussed above.

Under these new accounting procedures, we calculated the total cost of providing AQI services in FY 1992 by determining the amounts in each direct-charge account, then adding the pro rata share of the distributable accounts maintained at the area, regional, headquarters, and agency levels. In FY 1992, it cost APHIS approximately $49.5 million to provide services to international air passengers, $14.2 million to provide services to commercial aircraft, and $18.5 million to provide services to commercial vessels.

In the table below, column 1 shows the projected FY 1993 costs for each category of AQI service. We projected that in FY 1993, it will cost APHIS a total of $48.3 million to provide inspection services for international air passengers. Of this total, $39.9 million is for program delivery costs, which are costs incurred at the area level and below. The total also includes $4.4 million for a pro rata share of the program direction and support costs, as explained above, which include items at the regional and headquarters program staff levels. Finally, the total includes $4 million for a pro rata share of agency-level support costs, as discussed above, which include activities that support the entire agency, such as recruitment and development, legislative and public affairs, regulation development, regulatory enforcement, budget and accounting services, and payroll and purchasing services. The exceptions are costs for billing and collection services and rate development services. These costs are directly related to user fee activities, so these costs are directly added to the user fee activities they support and are not included in the proration of agency-level costs.

We project that in FY 1993, it will cost APHIS a total of $13.9 million to provide inspection services for aircraft. This total includes $11.5 million for program delivery costs, $1.3 million for program direction and support costs, and $1.1 million for agency-level support costs.

Finally, we project that it will cost APHIS a total of $17.8 million to provide inspection services for commercial vessels in FY 1993. This total includes $14.7 million for program delivery costs, $1.6 million for program direction and support costs, and $1.5 million for agency-level support costs.

For the commercial aircraft user fee, we also included an amount that would provide for a reasonable balance in the AQI User Fee Account (referred to below as "the Account"). (See "Reserve Amounts" below.) We have accumulated a reasonable reserve in the Account for the international air passenger and commercial vessel categories, but we have no reserve in the Account for commercial aircraft inspections. Consequently, we included an amount to build a reasonable reserve in the aircraft inspection fee calculation. This amount is shown in column 2 of the table. The cost of the activity plus the amount (if applicable) of the reserve represents the total cost of the activity for FY 1993. These amounts are shown in column 3 of the table.

Volumes

Next, we estimated the annual number of passengers and means of conveyance (aircraft and vessels) that would be subject to inspection. The estimates, which were based on our FY 1992 collection history, were then used as a basis for projecting activity volumes for FY 1993. We used our workload accomplishment data from the past 6 years to determine the average increase in passengers or means of conveyance arriving in the United States. (APHIS maintains statistical data on each AQI activity performed, such as the number of passengers inspected, the number of vessel arrivals, and the number of commercial aircraft arrivals. This information is maintained in APHIS' Workload Accomplishment Database System.) The average increase derived from the workload accomplishment data was applied to the FY 1992 volumes to project anticipated volumes for FY 1993.

A total of 30,368,914 international air passengers were subject to inspection in FY 1992. Our workload accomplishment data indicate that international air passenger volumes increased an average of 8.98 percent each year between FY 1985 and FY 1991 (the last full year of data available). We applied this percentage to our estimated FY 1992 volume to arrive at a projected FY 1993 international air passenger volume of 33,096,043.

A total of 47,438 commercial vessels were subject to inspection in FY 1992. Our workload accomplishment data indicate that commercial vessel arrivals increased an average of 1.91 percent each year between FY 1985 and FY 1991. We applied this percentage to our estimated FY 1992 volume to arrive at a projected FY 1993 commercial vessel volume of 48,344.

A total of 160,401 commercial aircraft were subject to inspection between February 9, 1992, when the commercial aircraft user fee became effective, and the end of FY 1992. To arrive at an FY 1992 base volume for aircraft, we divided 160,401 by 235, the number of days in FY 1992 that the commercial aircraft fee was in effect. This produced a daily average of 682.56 aircraft. We applied this daily average to a full year, 365 days, to arrive at a base FY 1992 volume of 249,133 aircraft. Our workload accomplishment data indicate that commercial aircraft arrivals increased an average of 4.45 percent each year between FY 1985 and FY 1991. We applied this percentage to our estimated FY 1992 volume to arrive at a projected FY 1993 commercial aircraft volume of 260,219.

Fee Adjustments

In calculating the adjusted user fees, our final step was to divide the sum of the cost of providing each service plus the amount needed to maintain a reasonable balance in the Account for each service category by the projected number of passengers or means of conveyance subject to inspection, thereby arriving at a "raw" fee.

For the international air passenger user fee, the raw fee was $1.46. We rounded this fee to the nearest nickel, $1.45. For commercial vessels the raw fee was $369.41; we rounded this fee up to the nearest quarter, $369.50.

For the commercial aircraft user fee, the raw fee was $66.83; rounding this fee up to the nearest quarter would yield a fee of $67.00. However, the commercial aircraft fee contains an amount for a reserve. We considered the effect of the rounded fee on the growth of the reserve. If we had set the fee at the rounded amount of $67.00, the reserve at the end of FY 1994 would be approximately $6.6 million, which is $2.8 million more than our estimated FY 1994 reserve requirement of approximately $3.8 million. (The estimated FY 1994 reserve requirements are based on our FY 1994 estimated costs.)

To contain the growth of the reserve, we adjusted the raw fee for commercial aircraft by $6.02. We arrived at $6.02 by subtracting the FY 1994 reserve requirement of $3.8 million from the estimated reserve of $6.6 million, then dividing the difference by the number of aircraft that we estimated will be subject to the fee in FY 1993 and FY 1994 (194,631 and 271,799, respectively). We subtracted the $6.02 from the raw fee of $66.83 to arrive at an adjusted raw fee of $60.81, then rounded the fee up to the nearest quarter to arrive at an adjusted commercial aircraft user fee of $61.

Rounding of Fees

The international air passenger user fee was rounded to the nearest nickel ($1.45) to ensure compliance with the congressionally imposed revenue cap. We rounded to the nearest nickel because if we had rounded to the nearest quarter ($1.50), the sheer volume of air passengers means that we would recover approximately $1.7 million in additional revenue, unless growth were less than experienced between 1985 and 1991.

The commercial aircraft and commercial vessel fees were rounded up, rather than down, to the nearest quarter in order to ensure that we collect enough revenue to cover the costs of providing these services. The final fees are shown in column 5 of the table.

Column 6 of the table shows the projected revenue that APHIS will collect in FY 1993 from international air passengers, commercial aircraft, and commercial vessels. The projection was calculated using the original, higher, user fees for October through December and the adjusted user fees for January through September.

ADJUSTED FY 1993 AQI USER FEE RATES

FY 1993 Cost (1)	Addition to reserve (2)	Total cost (3)	Volume (4)	(Adjusted fee (decrease) (5)	Projected FY 1993 revenue[1] (6)
For international air passengers: $48,300,315	N/A	$48,300,315	33,096,043	$1.45 ($0.55)	$52,424,399
For commercial aircraft: $13,951,088	$3,439,994	17,391,082	260,219	61.00 (15.75)	16,906,370
For commercial vessels: $17,858,623	N/A	17,858,623	48,344	369.50 (174.50)	19,451,233

[1] Estimated revenue assumes a January 1, 1993, implementation date and includes October through December 1992 collections at the original AQI user fee rates. Revenue for the international air passenger user fee includes 8,063,885 collections at $2.00 each and 25,032,158 collections at $1.45 each. Revenue for the commercial aircraft user fee includes 65,588 collections at $76.75 each and 194,631 collections at $61.00 each. Revenue for the commercial vessel user fee includes 9,101 collections at $544.00 each and 39,243 collections at $369.50 each.

Reserve Amounts

When the original fees were developed, we determined a reasonable balance, or reserve, to be one-quarter of the annual costs of providing AQI services. This was necessary to ensure that APHIS had access to funds equal to 3 months' normal operating expense. The reserve also ensured that APHIS had sufficient operating funds in cases of bad debt, carrier insolvency, and fluctuation in activity volumes.

Each service category must, through user fee receipts, return enough money to APHIS to cover the cost of providing AQI services to that particular category. Our reserve is now based on collection needs of each category separately, rather than an amount equal to 3 months' normal operating expense in each category. International air passenger and commercial aircraft payments are due on a quarterly basis, with monies not remitted to APHIS until after the close of the quarter in which they were incurred or collected. It is, therefore, necessary to maintain a reserve in these two categories equal to 3 months' normal operating expenses. On the other hand, the commercial vessel fees are collected upon each vessel's arrival by the U.S. Customs Service and remitted to APHIS on a monthly basis. It is, therefore, necessary only to maintain a reserve equal to 1 month's normal operating expenses for the commercial vessel category.

APHIS carried over a reserve of $19.7 million into FY 1992, and in FY 1992 added $15.3 million more to the reserve balance. The international air passenger and commercial vessel categories have built up sufficient reserve balances, so the reserve component has been eliminated from these categories. However, the commercial aircraft user fee did not become effective until February 9, 1992, and has not built up a reserve equal to 3 months' normal operating expenses. Therefore, it is necessary to add $3.4 million to the FY 1993 commercial aircraft fee category to ensure an adequate reserve exists.

Commercial Vessel Collection Limits

Section 354.3(b)(1) of the regulations contains the amount of the user fee to be charged to commercial vessels upon each arrival, but limits the collection of the fee to 15 times that amount in a calendar year. When the regulations were written, the intent was that no vessel would be charged the fee more than 15 times in a year. Because the fees are subject to change, however, basing the limit on dollar amounts instead of the number of payments made could result in vessels being charged on more than, or fewer than, 15 occasions. Therefore, we are changing the words "15 times that amount" to "15 payments."

Definitions

We are adding a definition of "commercial aircraft" to the regulations for the sake of clarity. A "commercial aircraft" is defined as any aircraft used to transport persons or property for compensation or hire. Since the commercial aircraft user fee became effective in February 1992, questions have arisen as to the types of aircraft APHIS considers to be commercial aircraft. The regulations in § 354.3(e)(2) list the categories of commercial aircraft that are exempted from paying user fees, but the lack of a definition of a commercial aircraft leaves the potential for misinterpretation. The addition of this definition will make the regulations easier to understand and eliminate a source of possible misunderstanding.

Miscellaneous

In addition to the changes set forth above, we are updating an address that appears several times in the regulations.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The user fees charged by APHIS for the AQI services it provides are intended to recover the full costs of the services. The fees for commercial vessels, international air passengers, and commercial aircraft need to be changed as soon as possible to avoid collecting more in fees than is needed to recover the actual costs and, in the case of the fees for international air passengers and commercial aircraft, to avoid exceeding a congressionally imposed revenue cap. To simplify bookkeeping, we have designated January 1, 1993, which is the first day of the second quarter of FY 1993, as the effective date for this interim rule.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective less than 30 days after publication in the **Federal Register**. We will consider comments that are received within 30 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register** including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This interim rule amends the regulations by adjusting the user fees charged for certain AQI services provided by APHIS in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of an international air passenger, commercial vessel, or commercial aircraft.

We are lowering the fee in each of the three categories: From $2 to $1.45 for international air passengers, from $544 to $369.50 for commercial vessels, and from $76.75 to $61 for commercial aircraft. These reductions are necessary to ensure that APHIS does not collect more revenue than needed to cover the cost of providing the services and maintain a reasonable reserve. Further, we believe APHIS would exceed a congressionally imposed limit on the amount of revenue that can be collected for airport inspection services—$75 million in FY 1993—if the rates are not lowered.

The reductions in the international air passenger, commercial aircraft, and commercial vessel user fees are not expected to have a significant economic impact. The 55-cent reduction in the user fee paid by international air passengers would result in a projected total savings of $13.7 million for all international air passengers in FY 1993, but its effect on individual passengers would be inconsequential. For the airline industry as a whole, the lower international air passenger user fee could potentially result in an increase in ticket sales. Using an elasticity of demand of −0.2 (Transpacific Commercial Air Carrier Passenger and Operations Forecasts, 1989–2020, Office of Aviation Policy and Plans, Forecast Branch, 1989) and an average ticket price of approximately $607, we estimate an increase of 0.018 percent, or approximately 4,500 passengers, in FY 1993, which would mean an increase in revenue of $2.7 million.

A $3.1 million total savings is projected for the airline industry in FY 1993 as a result of the $15.75 reduction in the commercial aircraft user fee. Although an average airline's share of that savings cannot be determined, the reduction is only a small percentage of the operating costs for an average flight.

The $174.50 decrease in the commercial vessel user fee could result in a projected total savings of $6.8 million in FY 1993. Because the number of times a commercial vessel can be charged the inspection fee is limited to 15 times in a calendar year, the maximum savings that could be realized by an individual vessel would be $2,617.50 in a year. Daily operating costs for dry bulk vessels are approximately $12,000, while daily costs for tankers are approximately $14,000. The voyage length for commercial vessels varies widely, so an average voyage length is not available, but the $174.50 decrease would be only a small percentage of the operating costs for any given voyage.

The Small Business Administration (SBA) defines a small entity in the air transportation industry as one with fewer than 1,500 employees. The SBA definition of a small entity in the ocean transportation industry is one with fewer than 500 employees. Although we cannot determine how many of the businesses that will be affected by this rule are small entities, it is unlikely that this rule will have anything other than a minimal, beneficial impact on any entity, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we are amending 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

§ 354.3 [Amended]

2. Section 354.3 is amended as follows:

a. Paragraph (a) is amended by adding, in alphabetical order, a definition of "commercial aircraft", as set forth below.

b. In paragraph (b)(1), the second sentence is amended by removing the words "$544 for each arrival, not to exceed 15 times that amount" and adding "$369.50 for each arrival, not to exceed 15 payments" in their place.

c. In paragraph (d)(5), the second sentence is revised to read as set forth below.

d. In paragraph (e)(1), the last sentence is amended by removing "$76.75" and "$61.00" in its place.

e. In paragraph (e)(3)(i), the first sentence is amended by removing the words "COD Field Office" and adding the words "APHIS User Fee Collections" in their place.

f. In paragraph (e)(3)(ii), the first sentence is revised to read as set forth below.

g. In paragraph (f)(1), the last sentence is amended by removing "$2" and adding "$1.45" in its place.

h. In paragraph (f)(5)(i), the first sentence is amended by removing the words "COD Field Office, P.O. Box 70791" and adding the words "APHIS User Fee Collections, P.O. Box 73562" in their place.

i. In paragraph (f)(5)(ii), the first sentence is amended by removing the words "COD Field Office, P.O. Box 70791" and adding the words "APHIS

User Fee Collections, P.O. Box 73562" in their place.

j. In paragraph (f)(5)(iii), the first sentence is revised to read as set forth below.

As revised, § 354.3, paragraphs (a), (d)(5), (e)(3)(ii), and (f)(5)(iii) read as follows:

§ 354.3 User fees for certain international services.

(a) * * *

Commercial aircraft. Any aircraft used to transport persons or property for compensation or hire.

* * * * *

(d) * * *

(5) * * * APHIS user fees, together with monthly statements, must be remitted to the United States Department of Agriculture, National Finance Center, APHIS User Fee Collections, P.O. Box 73562, Chicago, IL 60673.

* * * * *

(e) * * *

(3) * * *

(ii) The remitter must mail with the remittance a written statement to the United States Department of Agriculture, National Finance Center, APHIS User Fee Collections, P.O. Box 73562, Chicago, IL 60673. * * *

* * * * *

(f) * * *

(5) * * *

(iii) The remitter must mail with the remittance a written statement to the United States Department of Agriculture, National Finance Center, APHIS User Fee Collections, P.O. Box 73562, Chicago, IL 60673.

* * * * *

Done in Washington, DC this 28th day of December, 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–31832 Filed 12–30–92; 8:45 am]

BILLING CODE 3410–34–M

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AC70

Grain and Similarly Handled Commodities: Farmer-Owned Reserve Program for Wheat

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations with respect to the farmer-owned reserve (FOR) program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 110 of the Agricultural Act of 1949, as amended (the 1949 Act). The rule codifies the determination made by the Secretary of Agriculture (the Secretary) that 1992-crop wheat may not be pledged as collateral for FOR loans and deletes obsolete provisions of 7 CFR part 1421.

EFFECTIVE DATE: November 18, 1992.

FOR FURTHER INFORMATION CONTACT: Craig Jagger, Agricultural Economist, Grains Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), room 3740–S. P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–4418.

SUPPLEMENTARY INFORMATION:

Executive Order 12991 and Departmental Regulation 1521-1

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "major". A Final Regulatory Impact Analysis has been prepared and is available from the above-named individual.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalogue of Federal Domestic Assistance, to which this rule applies are Grain Reserve Program—10.067.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. This rule does not involve the preemption of State law; it is not retroactive; and it does not involve any exhaustion of administrative remedy issues.

Paperwork Reduction Act

The amendments to 7 CFR Part 1421 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35.

Statutory Background

Section 110 of the 1949 Act sets forth the statutory authority for the FOR program for wheat and feed grains. It provides that the determination of whether or not there will be entry of a crop into the FOR will be announced by December 15 of the year in which the crop of wheat was harvested and, in the case of feed grains, March 15 of the year following the year in which the crop of corn was harvested.

Entry into the FOR is triggered based upon prices and stocks-to-use (S/U) ratios. Section 110, paragraphs (2) and (3), provides the following:

(2) *Discretionary Entry*—The Secretary may make extended loans available to producers of wheat or feed grains if either of the following conditions is met:

(A) *Price Condition:* The Secretary determines that the average market price for wheat or corn, respectively, for the 90-day period prior to the announcement is less than 120 percent of the current loan rate for wheat or corn, respectively; or

(B) *S/U Condition:* As of the announcement date, the Secretary estimates that the S/U ratio on the last day of the current marketing year will be:

(i) In the case of wheat, more than 37.5 percent; and

(ii) In the case of corn, more than 22.5 percent.

(3) *Mandatory Entry*—The Secretary shall make extended loans available to products of wheat or feed grains if both of the conditions specified in subparagraphs (A) and (B) of paragraph (2) are met for wheat and feed grains, respectively.

If neither the price nor the S/U condition is met, the Secretary has no authority to make extended loans available to producers of wheat or feed grains.

On November 18, 1992, the Secretary announced that the estimated 1992 wheat S/U ratio at the end of the 1992 marketing year was 21.3 percent, the 90-day average market price of wheat was $3.17 per bushel, and 120 percent of the 1992 wheat loan rate is $2.65. Because the S/U is less than 37.5 percent and the 90-day average market price of wheat is greater than 120 percent of the 1992 loan rate for wheat, neither entry condition is met. Based on this review of existing and projected market conditions, the Secretary has no authority to allow entry of the 1992 crop of wheat into the FOR. This final rule amends 7 CFR part 1421 to set forth this determination.

In addition, this final rule removes the subpart in part 1421 entitled, "Subpart—Regulations Governing the Grain Reserve Program for 1982 and Subsequent Crops and Alternative Program for 1981 and Prior Crops" (§§ 1421.740–1421.756).

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425 and 1445e; 15 U.S.C. 714b and 714c.

2. Section 1421.217 is added to read as follows:

§ 1421.217 Reserve entry.

(a) The maximum quantity of 1990-crop wheat may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended, is 300 million bushels. No quantity of 1990-crop feed grains may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended.

(b) No quantity of 1991-crop wheat or feed grains may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended.

(c) No quantity of 1992-crop wheat may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended.

3. The subpart entitled "Subpart—Regulations Governing the Grain Reserve Program for 1982 and Subsequent Crops and Alternative Program for 1981 and Prior Crops," consisting of sections 14212.740 through 1421.756, is removed.

Signed at Washington, DC, on December 23, 1992.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–31846 Filed 12–30–92; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 545

[No. 92–537]

Operating Subsidiaries and Service Corporations: Technical Corrections

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Thrift Supervision (OTS) is making technical corrections to its operating subsidiaries and service corporation regulations in order to correct an erroneous cross-reference.

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Dean V. Shahinian, Assistant Chief Counsel for Corporate Activities, Corporate and Securities Division (202) 906–7289; Mary H. Gottlieb, Paralegal Specialist, Regulations and Legislation Division (202) 906–7135, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: By this action, the OTS is making technical corrections to its operating subsidiaries and service corporation regulations. The references in § 545.81(c)(1)(ii), 545.81(c)(2)(i) and 545.74(c) to § 500.32(c)(5), and the reference in § 545.74(b)(2) to § 500.32(c)(1)(i), are being replaced by references to § 516.1, because § 500.32 has been repealed and replaced by part 516. *See* 57 FR 14336 (April 20, 1992).

Administrative Procedure Act

Since this rule is a technical amendment and contains no substantive changes, the OTS promulgates this rule as a matter of agency organization and management. Therefore, pursuant to 5 U.S.C. 553(a)(2), this rule is exempt from the notice and comment and 30-day delay of effective date requirements of the Administrative Procedure Act.

Executive Order 12291

The OTS has determined that this final rule does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Regulatory Flexibility Act

It is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Consequently, a Regulatory Flexibility Act Analysis is not required.

List of Subjects in 12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic fund transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.74 [Amended]

2. Section 545.74 is amended by removing the number "§ 500.32(c)(5)" where it appears in paragraph (c) introductory text and adding in lieu thereof the number "§ 516.1"; and by removing the number "§ 500.32(c)(1)(i)" where it appears in paragraph (b)(2) and adding in lieu thereof the number "§ 516.1".

§ 545.81 [Amended]

3. Section 545.81 is amended by removing the number "§ 500.32(c)(5)" where it appears in paragraphs (c)(1)(ii) and (c)(2)(i) and adding in lieu thereof the number "§ 516.1".

Dated: December 28, 1992.

By the Office of Thrift Supervision.

John F. Robinson,

Acting Director.

[FR Doc. 92–31778 Filed 12–30–92; 8:45 am]

BILLING CODE 6720–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy; Pledging or Sale of Unguaranteed Portion of Loan

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Pursuant to section 7(a) of the Small Business Act (Act) 15 U.S.C. 636(a), the Small Business Administration (SBA) makes loans and other financings (hereinafter referred to collectively as loans) on a deferred (guaranteed) basis with banks or other lending institutions. SBA can guaranty up to 90 percent of such loans depending upon the loan amount. As such, there is an unguaranteed portion of every SBA guaranteed loan. This final rule permits, under prescribed procedures, on a case by case basis, and

with SBA's prior written consent, either the transfer of the unguaranteed portions of SBA guaranteed loans or the pledge of the notes which evidence SBA guaranteed loans. The regulation makes this procedure available only to those participating lenders who are financially secure, who have a history of being in compliance with applicable regulations, and who regularly use commercial lines of credit as a way to finance their lending operations.

DATES: This rule is effective on December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, AA/FA, (202) 205–6490.

SUPPLEMENTARY INFORMATION: Section 7(a) of the Small Business Act (Act) 15 U.S.C. 636(a) authorizes SBA to make loans on a deferred (guaranteed) basis with banks or other lending institutions. Historically, since its enactment in 1953, section 7(a) has contained various limitations on the amount of guaranty SBA may make available to a bank or other lending institution in furtherance of the statutory objectives expressed elsewhere in that provision. As a result, there remains an unguaranteed portion of every SBA guaranteed loan, the minimum size of which is dependent upon the statutory provision under which the loan is made.

The legislative history of these limiting provisions makes it clear that Congress did not intend for SBA to guarantee 100% of a given loan, and that it did intend for the bank or lending institution making a guaranteed loan to retain a sufficient economic interest in the loan to ensure its diligence in the making, servicing and liquidating of that loan. To that end, SBA historically has promulgated various regulations and utilized various contractual provisions designed to enforce the statutory requirement that the lender of a guaranteed loan retain an economic interest in the loan reasonably commensurate with the unguaranteed portion.

In most instances, that requirement for retention of economic interest has translated into a requirement for retention of at least a part of the unguaranteed portion of the guaranteed loan by the lender. (See for example 13 CFR 120.403–7(d).) However, SBA has permitted under prescribed procedures, on a case by case basis, and with its prior written consent both the transfer by some lenders of the unguaranteed portions of loans and the pledge by other lenders of the notes which evidence SBA guaranteed loans for the purpose of financing transactions for the benefit of those lenders. (See paragraph 12(a) of Blanket Guaranty Agreement, SBA Form (750).) These regulations codify the procedures SBA has followed in those transactions and will give its community of lenders clear guidance on when and how such financing transactions can be consummated. They are intended to facilitate the financing of the unguaranteed portions of SBA guaranteed loans only in circumstances where the lender regularly uses commercial lines of credit as a way to finance its lending operations.

Relative to these issues, on October 9, 1992, SBA published a notice of proposed rulemaking (57 FR 46523) which proposed the promulgation of regulations identical to those which are being promulgated by this publication. In response to that notice, three comments were received. Two of those comments came from SBA lenders which opposed the proposal. The basis for their opposition was that the ability to sell or otherwise alienate the unguaranteed portion of a guaranteed loan would somehow compromise the credit judgment of the lender, because it would no longer have a "stake" in the loan. In addition, one of these comments suggested that the proposal would lead to undercapitalized lenders participating in the SBA guaranteed loan program, to the detriment of SBA and its small business constituency.

SBA does not share the views of these commenters. The Agency is quite satisfied that the lenders which are allowed to avail themselves of the benefit of the regulations will be required to retain an economic risk in the guaranteed loans sufficient to ensure that their credit judgment is not compromised. If it is not demonstrated to SBA's satisfaction that such a degree of economic risk is maintained in a given case, SBA's consent to a proposal put forth under the regulations will not be forthcoming.

In addition, SBA will not permit an undercapitalized lender to avail itself of the benefits of these regulations. As a condition to approval of any proposal, SBA will carefully review the creditworthiness of the lender and its compliance with SBA standards, and only approve the proposal if the lender is in compliance with those standards exclusive of the benefit to be derived from the proposal.

The third comment came from the Credit Administration Division of the Financial Management Service of the Department of the Treasury. The letter expressed support for the proposal with several conditions. It required the SBA's guarantee to an originating lender which utilizes the regulations to remain the same, and that the originating lender remain the servicer of the loan. These conditions are fully satisfied by the regulations themselves. In addition, it required that SBA determine that a lender availing itself of the regulations is financially sound, as demonstrated by satisfaction of one of three conditions:

1. Lender has been audited by the SBA's Inspector General within the previous six months and found to be financially sound. Thereafter, audits to be performed at intervals not exceeding 12 months.

2. Lender is rated "A" or better by Moodys, Standard and Poors or equivalent credit rating agency.

3. Lender meets minimum standards published by SBA regarding net worth, liquidity and debt to equity ratios.

It is SBA's intent that it will require any lender which seeks to avail itself of the benefit of these regulations to satisfy at least the third condition, and it expects that the second condition would be met by virtue of compliance with the third. While SBA does not disagree with the spirit of the first condition it must consider the resources required and the ability to perform as stated before making such a requirement mandatory.

These regulations are applicable only for two types of Nondepository Lenders; Small Business Lending Companies which are licensed and regulated by SBA (see 13 CFR 120.302–1 *et seq.*), and Business and Industrial Development Companies which are chartered under state statutes. SBA is reserving the right to deny a lender's request for its consent under these regulations if such lender is not, or in the past has not been, in compliance with regulations governing SBA lending activities or any other applicable state or Federal statutory or regulatory requirements.

The procedures established pursuant to these regulations will be available only to those non-depository lenders which meet certain criteria. First, as a threshold matter, the lender must be financially secure. Next, the lender must presently be, and historically has been, substantially in compliance with SBA regulations. The underlying premise of the regulations is that some non-depository lenders who meet these criteria are in a good position, through the transfer or pledge of their unguaranteed portions, to generate new funds that will enable them safely to expand the number of small businesses to which they can provide financing. That purpose can only be served when SBA is satisfied that the lender has demonstrated the financial and programmatic ability to service its loans.

These regulations are intended to cover either a situation in which a lender wants to pledge the notes evidencing SBA guaranteed loans, or to transfer for value the unguaranteed portions of such notes or the right to the income stream from such unguaranteed portions for the purpose of obtaining financing. The documents necessary to effectuate any such financing arrangement will differ from case to case. SBA will attempt to accommodate any reasonable proposal for such financing. However, the regulatory requirements set out below are designed to provide general conditions which must be satisfied in all such cases before SBA will accommodate any proposal with its prior written consent.

In this regard, under these regulations, only a party agreeable to SBA will be permitted to hold the notes evidencing SBA guaranteed loans. Normally, SBA requires the lender to retain custody of such notes. (See 13 CFR 120.200–2.) However, SBA recognizes that parties to the types of financing transactions contemplated by these regulations may sometimes not be willing to permit a lender to retain the notes for reasons peculiar to the transactions. In this case, SBA will either hold the notes itself or allow an agreed upon third party, but not the party providing the credit to the non-depository lender, to hold the notes in custody under agreed upon terms and conditions.

The regulations require all parties to the financing transaction to enter into a written agreement which protects SBA's interests as guarantor of a major portion of the repayment of the notes, as a pre-condition to SBA's prior written consent to the transaction. Any such agreement will have to indicate the mechanism by which the notes will be held and safeguarded, contain an acknowledgment of SBA's interest in the notes, and reflect the agreement by all relevant parties to recognize and uphold that interest in a way consistent with the Small Business Act, the relevant regulations promulgated thereunder and the provisions of the contractual agreement under which SBA's guaranty was given. In this regard, SBA has developed a recommended format for the requisite agreement which it will make available to any parties who wish to proceed under the regulations.

Finally, under these regulations, SBA will precondition its prior written consent upon the demonstration by the participating lender of a continuing economic interest in the unguaranteed portions of the loans. In the case of a pledge, that interest is demonstrated by retention of all economic interest in the actual unguaranteed portions. In the case of a transfer, a participating lender will be required to make a satisfactory showing that it continues to be economically at risk for the unguaranteed portions in a degree sufficient in SBA's sole judgment to warrant SBA's consent. The ultimate risk of loss on the unguaranteed portions must continue to be borne by the participating lender. The regulations cite a number of non-exclusive means which may be employed singly or in combination by a lender to demonstrate such risk retention.

This rule is effective immediately pursuant to authority set forth in 5 U.S.C. 553(d)(1).

Compliance With Executive Order 12291, 12612, and 12778, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

For purposes of Executive Order 12291, SBA certifies that this rule is not a major rule because it would not have an annual economic effect in excess of $100 million, it would not lead to a major increase in costs, and it will not have adverse effects on competition. SBA believes this rule will lead to additional funds being made available for the purpose of lending to small business concerns. SBA is of the opinion that such increased amounts will be approximately $50 million annually.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities for the same reason that it is not a major rule.

For purposes of Executive Order 12612, SBA certifies that this rule does not have federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule contains no new or additional reporting or recordkeeping requirements.

For purposes of Executive Order 12778, SBA certifies that this rule, to the extent practicable, is drafted in accordance with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—businesses, Small businesses.

For the reasons set forth above part 120 of title 13, Code of Federal Regulations is amended as follows:

PART 120—[AMENDED]

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Subpart C of part 120 is amended by adding a new § 120.301–7 to read as follows:

§ 120.301–7 Financings by nondepository lenders.

(a) A Nondepository Lender may pledge the notes evidencing loans or financings (hereinafter collectively loans), a portion of the repayment of which are guaranteed by SBA, or transfer for value the unguaranteed portions of loans, a portion of the repayment of which are guaranteed by SBA, if SBA gives its prior written consent to such pledging or transfer. In order for SBA to exercise its discretion under this section, the Lender must be financially secure and must presently be, and historically have been, substantially in compliance with SBA's regulations and any other applicable state or Federal statutory or regulatory requirements. SBA's written consent to each such transaction will be given in SBA's sole discretion, and will be given only if the following conditions are agreed to in writing by SBA, the Nondepository Lender and all third parties whose interests are involved in such a transaction:

(1) The Lender of the loans, SBA or a third party custodian agreeable to SBA, will hold all pertinent loan instruments as defined by 13 CFR 120.200–2 and SBA's blanket Guaranty Agreement (SBA Form 750), and the Lender will continue to service the loans after the pledge or transfer is made.

(2) The ultimate risk of loss on the unguaranteed portions must continue to be borne by the Lender. The Lender of the loans will continue to retain an economic risk in the unguaranteed portions. Retention of such economic risk must be demonstrated to SBA's satisfaction. Such demonstration may include, but is not limited to, agreement to the following undertaking(s) and must be sufficient in SBA's sole discretion to satisfy SBA's requirement that the Lender remains at economic risk for the unguaranteed portions:

(i) In the case of a sale of unguaranteed portions:

(A) establishment of a sufficient reserve fund; and/or

(B) retention of a sufficient level of insurance; and/or

(C) agreement to reacquire any unguaranteed portion of a guaranteed loan or the note evidencing an SBA guaranteed loan if the underlying loan goes into default pursuant to SBA's regulations.

(ii) In the case of a pledge of notes, retention by the lender of all economic interest in the unguaranteed portion of any loans which the notes evidence.

(3) SBA, the Lender and all relevant third parties, as determined by SBA in its sole discretion, must enter into a written agreement satisfactory to SBA under which SBA's interest as guarantor of the subject loans is acknowledged and all relevant third parties agree to recognize and uphold those interests pursuant to the Small Business Act, the regulations promulgated thereunder and the contractual provisions under which SBA agreed to guaranty the loans (SBA Form 750).

(b) For purposes of this regulation the term Nondepository Lender shall mean one of the following two types of Loan Participant as that term is defined at 13 CFR 120.300:

(1) Small Business Lending Company regulated by SBA; or

(2) Business and Industrial Development Company.

3. Section 120.200–2 is amended by revising the second sentence thereof to read as follows:

§ 120.200–2 Servicing guaranteed loans.

* * * Unless provided otherwise, pursuant to an agreement developed in accordance with 13 CFR 120.301–7, the Lender shall hold the note, instruments of hypothecation and all other agreements, documents and instruments required in connection with such loans. * * *

4. Section 120.403–7(d) is amended by revising the first sentence thereof to read as follows:

§ 120.403–7 Limitations on preferred lenders; SBA access.

* * * * *

(d) *Sale of all or part of unguaranteed portion.* Except as otherwise agreed to by SBA pursuant to agreement developed under 13 CFR 120.301–7, a Preferred Lender is prohibited from selling all or part of the unguaranteed portion of a PLP loan when such unguaranteed portion is 20 percent of the loan. * * *

* * * * *

Dated: December 9, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92–31725 Filed 12–30–92; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 121

Small Business Size Standards; Business Loan Program; Alternative Size Standard

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: The Small Business Administration (SBA) is adopting, on an interim final basis, an alternate size standard criterion for its Business Loan (7(a)) Program, which would allow a concern to qualify if it satisfied certain net worth and net income tests presently used for its Certified Development Company (504) program or financing under the Small Business Investment Company (SBIC) program. The size standards are being simplified by extending the existing "alternate standard" to the Business Loan Program. This alternate standard consists of two measures, $6.0 million in net worth and $2.0 million in net income (after Federal income taxes). Both of these measures must be met for a firm to qualify as small under the alternate size criterion. However, a firm may still continue to qualify as a small business pursuant to the size standard applicable to its primary industry, even if it does not meet this alternative standard.

DATES: Effective on December 31, 1992. Comments must be submitted on or before March 1, 1993.

ADDRESSES: Send comments to: Robert N. Ray, Acting Director, Size Standards Staff, 409 3rd Street, SW., suite 8150, U.S. Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ajoy K. Sinha, Size Standards Staff, (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA's regulations currently allow a concern applying for either a loan under the Certified Development Company (504) program or financing under the Small Business Investment Company (SBIC) program to qualify as a small business if together with its affiliates, its net worth does not exceed $6.0 million and it has an average of not more than $2.0 million in net income (after Federal income taxes) measured over the concern's preceding two completed fiscal years (13 CFR 121.802(a)(2)). A firm that exceeds those net worth or net income levels (hereinafter the "alternative standard") can also be considered an eligible small business if its size is at or below the separate numerical size standard established for its industry (§ 121.601).

Under this interim final rule, the two-part alternate standard test would also be applied to SBA's General Business Loan (7(a)) Program. As such, a concern applying for a 7(a) loan could elect to meet either the alternate standard or the single employee- or receipts-based standard that is specified for its industry.

SBA is promulgating this rule on an interim final basis without opportunity for prior public comment, pursuant to authority contained in the Administrative Procedure Act, 5 U.S.C. 553(b)(B). SBA is seeking public comment on this provision as it recognizes that the public may desire input into the Agency's final decision on its application of the alternate standard to a particular Agency program. As such, in promulgating an interim final rule, SBA will give full consideration to any comments received.

As indicated above, SBA's regulations allow a business to be considered small for purposes of two of the Agency's financial programs, but not the 7(a) Program. Because of this situation, a business may, for example, qualify as a small business and obtain financing pursuant to the 504 Program (to construct a building), but not be able to obtain a loan under the 7(a) Program (to purchase inventory). This anomalous situation is exacerbated by the current economic climate in which businesses, and in particular small businesses, are having great difficulty obtaining credit in the private market. To insure that SBA's implementation of the Business Loan Program does not hinder businesses which are already considered "small businesses" for the purposes of other financial programs, and to facilitate the availability of financing in the most expeditious manner, this rule is being published on an interim final basis. It should be emphasized that this amendment merely expands the types of financing for which small businesses that already qualify as "small businesses," under the alternate standard for other purposes, are eligible.

This change would also benefit small business by simplifying the size standards applicable to applicant firms. A two-part alternate standard applicable to every firm, regardless of its type of business activity, reduces the burden and confusion as to whether or not the firm is a small business, which can be encountered in determining the size standard for its primary industry. Most firms eligible as small businesses under the industry size standard will also be eligible under the alternate standard. In those few cases where the firm exceeds the net worth and net income test, the firm would ascertain whether it is an eligible small business under the more complicated industry size standards. Thus, this change greatly simplifies the determination of the size standard for a loan applicant.

SBA specifically invites comment on the appropriateness of these alternative size standards expressed in net worth and net income terms. SBA is seeking comment both as to its decision to use these measures as alternative measures to its standard industry specific size standards for its 7(a) Business Loan Program and the appropriate magnitude (either higher or lower) of these measures if the commentor(s) believe these alternative measures should be used. SBA is willing to consider industry data and other information prior to making a final decision on a size standard. Comments suggesting other standards should address the questions of:

- The interaction of these size standards with SBA's programs;
- The relative levels of participation at different size standards;
- The effect of these proposed size standards or other alternative size standards on business firms within these industries; and
- The prospect of significant new entrants into these industries in response to this program.

Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612 and 12778, and the Paperwork Reduction Act

General

SBA considers that this interim final rule will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*). In addition, the interim final rule constitutes a major rule for the purpose of Executive Order 12291. Immediately below SBA has set forth a summary regulatory impact analysis and an initial regulatory eligibility analysis of this proposal.

(1) Description of Entities to Which the Rule Applies

For purposes of financial assistance, SBA estimates that about 47,000 firms currently defined as small business for the 504 and SBIC programs will be eligible to seek financial assistance offered by the SBA's 7(a) Business Loan program, provided they meet other program requirements for assistance. The vast majority of the firms gaining eligibility for the 7(a) program because of this rule operate in the retail trade and services industries; almost no firms in manufacturing or mining will gain eligibility for the 7(a) program because of this rule.

The proposed size standards would not impose a regulatory burden because they do not regulate or control business behavior.

(2) Description of Potential Benefits of the Rule

Under this interim final rule small firms which are already eligible for other SBA financial assistance, will be eligible for the 7(a) Business Loan Program. This may result in job creation or retention in certain areas and localities, with associated benefits in consumer spending and tax revenue, but such benefits are difficult to quantify. Direct benefits in terms of number and volume of loans can be estimated, however. SBA accordingly estimates that about 450 firms each year should receive approximately $200 million in loans that would not have been guaranteed under the previous size standards.

Another real but unquantifiable benefit would be the saving in time to potential borrowers and SBA personnel from consulting a simple, streamlined size standard instead of the lengthy table and associated Standard Industrial Classification codes and their descriptions that must now be examined before each anticipated or actual loan transaction.

(3) Description of Potential Costs of the Rule

This interim final rule should not result in any extra costs with respect to SBA's loan programs. The competitive effects of size standards revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovation, mergers, and foreign trade.

The change to size standards is not anticipated to have any appreciable effect on any of these factors.

(4) Description of the Potential Net Benefits From the Rule

From the above discussion, SBA believes that, because the potential costs of this interim rule are minimal, the potential net benefits would approach fairly closely the potential benefits. The impact of the new size standard will appear exclusively in the Federal business lending area in which it is targeted.

(5) Description of Reasons Why This Action is Being Taken and Objectives of Rule

SBA has provided above a statement of the reasons why the new alternative standard for the business Loan Program is being promulgated on an interim final basis and a statement of the reasons for and objectives of this proposal.

(6) Legal Basis for Proposed Rule

The legal basis for the proposal is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

(7) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with these interim final or proposed rules. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to Interim Final Rule

This interim final rule will establish the most appropriate individual industry and alternative standards by which to define those small businesses that are eligible for SBA's assistance programs. There are no significant alternatives to defining a small business. SBA certifies that this interim final rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. SBA further certifies that this interim final rule will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. For purposes of Executive Order 12778, SBA certifies that this interim final rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

§ 121.802 [Amended]

2. Section 121.802(a)(1) is amended by removing the words "Business Loan,".

3. § 121.802(a)(2) is revised to read as follows:

§ 121.802 Establishment of the size standard.

(a) * * *

(2) For financial assistance and/or management/technical assistance under the SBA Business Loan, Small Business Investment Company, and Development Company Programs, an applicant

concern must meet one of the following standards;

(i) Together with its affiliates, it does not have net worth in excess of $6.0 million, and does not have average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years in excess of $2.0 million; or

(ii) Together with its affiliates, it meets the size standard for the industry in which it is primarily engaged and excluding its affiliates, meets the size standard for the industry in which it is primarily engaged. These size standards are set forth in § 121.601.

* * * * *

Dated: December 21, 1992.

Patricia Saiki,

Administrator, U.S. Small Business Administration.

[FR Doc. 92-31630 Filed 12-30-92; 8:45 am]

BILLING CODE 8025-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 92-50]

Financial Responsibility Requirements for Nonperformance of Transportation—Revision of Self-Insurance Qualification Standards

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its passenger vessel operator financial responsibility rules to provide that: Operators demonstrating a minimum of five years of operation in the United States trades with a satisfactory explanation of any claims for nonperformance of transportation need meet only net worth standards to qualify as self-insurers; and operators qualifying for self-insurance may not use the sliding scale provisions of Part 540 to qualify for a Certificate (Performance). This will afford greater flexibility for passenger vessel operators to meet their obligation to safeguard the unearned passenger revenue generated by their operations.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION:

Background

The Federal Maritime Commission ("Commission") initiated this proceeding by publishing a Notice of Proposed Rulemaking ("NPR") in the **Federal Register** on October 20, 1992 (57 FR 47830). The NPR solicited comment on a proposed rule to revise the Commission's administration of section 3 of Public Law 89-777, 46 U.S.C. app. 817e ("Section 3").[1] Specifically, the NPR would further revise 46 CFR Part 540, Subpart A, to provide that: (1) Operators demonstrating a minimum of five years of operation in the United States trades with a satisfactory explanation of any claims for nonperformance of transportation need meet only net worth standards to qualify as self-insurers; and (2) operators qualifying for self-insurance may not use the sliding scale provisions to qualify for a Certificate (Performance).

The Commission published this proposed rule following its consideration of certain issues in Docket No. 92-19, Revision of Financial Responsibility Requirements for Non-Performance of Transportation.[2] Although Docket No. 92-19 proposed certain revisions to the Commission's Section 3 self-insurance regulations, the Commission determined that additional conditions might be necessary to ensure adequate protection for unearned passenger revenue ("UPR") held by self-insured passenger vessel operators. In particular, the Commission noted that although its objective is to ease unnecessary burdens on passenger vessel operators, it remained committed to providing adequate protection of the travelling public.

Comments

Comments in response to the NPR were filed by American Hawaii Cruises ("AHC"), a deep-water U.S.-flag passenger vessel operator, and the International Council of Cruise Lines ("ICCL"), an association of foreign-flag passenger vessel operators.

AHC supports eliminating the working capital test, which it believes will result in greater financial flexibility for passenger vessel operators. Although the location of its assets is not affected by the requirement that such assets be located in the United States, AHC believes that operators should be allowed to include at least some foreign-based assets in their calculation of net worth.

ICCL also supports the proposed revisions and has no objection to barring self-insurers from the use of the sliding scale provision for determining minimum required coverage. However, it believes that it is unnecessary to require assets such as cruise ships to be permanently and continuously located within the United States to qualify as assets for FMC net worth self-insurance purposes. In this connection, ICCL asserts that cruise ships' assets are committed to the U.S., and are readily reachable in both a practical and legal sense, if necessary to satisfy judgements or other legal process by claimants. In particular, ICCL claims that, as a practical business matter, the marketing and operations support required to ensure successful cruise ship operations make it unrealistic to assume that an operator would reposition a $100 million-$350 million cruise vessel (together with the marketing and operations support necessary to operate such a vessel) to avoid a claim otherwise covered by a $15 million UPR bond. ICCL suggests that the Commission consider vessels regularly scheduled to call at U.S. ports as acceptable assets for self-insurance purposes.

ICCL also urges the Commission to clarify its rules to make clear that self-insurance can be utilized by a parent's subsidiaries as long as the parent qualifies and furnishes an appropriate guarantee.[3]

Discussion

Self-insurance must be treated differently from those forms of section 3 financial responsibility coverage that are underwritten by recognized institutions which independently assess the potential risks and costs associated with providing the coverage. Because self-insurance proposals can be presented to the Commission without the benefit of an independent entity's analysis and endorsement of an operator's future financial and operational risk-worthiness, the Commission itself must evaluate these probabilities based upon an applicant's own assessment of its present and future financial health. In this connection, the NPR noted:

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[1] Section 3 provides, in pertinent part:

> No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

[2] In Docket No. 92-19, the Commission amended 46 CFR part 540, subpart A, to (1) institute a sliding scale formula for determining the amount of financial responsibility coverage required for operators meeting certain requirements; (2) exclude, under certain conditions, revenue from "whole-ship" arrangements from being considered as unearned passenger revenue ("UPR"); and (3) publish a suggested form escrow arrangement as a guideline for the industry (57 FR 51887 (September 14, 1992)) (UPR is defined under 46 CFR 540.2(i) as "* * * that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.").

[3] ICCL also asks the Commission to clarify whether subsidiaries can use a common bond. Bonding issues are beyond the scope of this proceeding. The Commission will point out, however, that its rules do not preclude a parent from covering its vessels under a common bond, guarantee or escrow account.

> Self-insurance presents a greater risk of loss to the travelling public than do other forms of coverage that are backed by independent interests holding sums of money for the protection of the public. Consequently, while the Commission believes that it is appropriate to ease the burden on the passenger vessel industry, it does not wish to expose the travelling public to undue risk. Accordingly, the Commission proposes to allow operators to qualify for self-insurance on the basis of their net worth alone, but without the benefit of the sliding scale provisions of the final rule in Docket No. 92–19. Liberalized sliding scale provisions will be available only where coverage is provided through independent interests. As an additional safeguard, the Commission also proposes to require operators wishing to qualify for self-insurance to provide evidence (in the form of an affidavit by the operator's Chief Executive Officer or other responsible corporate officer) of a minimum of five years' operation in United States trades, with a satisfactory explanation of any claims for nonperformance of transportation.[4]

Although AHC and ICCL have requested the Commission to relax the requirement that the assets used to qualify as a self-insurer be physically located in the United States, the final rule herein continues existing requirements for the location of those assets. The Commission remains concerned that passengers may not have the ability or resources to pursue foreign-domiciled assets, and that such efforts would not be cost-effective in the majority of instances.[5] Moreover, as noted in the NPR, "self-insurance presents a greater risk of loss to the travelling public than do other forms of coverage that are backed by independent interests holding sums of money for the protection of the public."

Finally, with regard to ICCL's request that the Commission's rules clarify that different cruise line subsidiaries operating under common ownership are permitted to use a common bond, and that self-insurance can be utilized by the smaller subsidiaries as long as a larger subsidiary qualifies and furnishes an appropriate guarantee, the Commission notes—as it did in the NPR—that nothing in the present rules precludes a parent from acting as a guarantor with respect to its affiliates' performance, provided that the Commission has determined the parent to be "acceptable" pursuant to its rules (46 CFR 540.5(c)).[6] Moreover, nothing in the Commission's rules or this proposal would preclude a subsidiary from qualifying as a self-insurer on its own merit.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more:

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations because the passenger vessel operators impacted by the rule are generally not small businesses.

OMB Control Number: The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072–0012. Public reporting burden for this collection of information is estimated to average 3 hours per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 3 Public Law 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); section 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); and section 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716), the Federal Maritime Commission amends part 540 of title 46 of the Code of Federal Regulations as follows:

PART 540—[AMENDED]

1. The authority citation to part 540 continues to read:

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716).

2. Section 540.5 is amended by revising the introductory text of paragraph (d) and paragraphs (d)(4), (5) and (6), and the introductory text of paragraph (e) to read as follows:

§ 540.5 Insurance, guaranties, escrow accounts, and self-insurance.

* * * * *

(d) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. Such evidence must include an affidavit by the operator's Chief Executive Officer or other responsible corporate officer of a minimum of five years of operation in United States trades, with a satisfactory explanation of any claims for nonperformance of transportation. In addition, applicant must demonstrate financial responsibility by maintenance of net worth in an amount calculated as in the introductory text of this section. The Commission will take into consideration all current contractual requirements with respect to the maintenance of such net worth to which the applicant is bound. Evidence must be submitted that the net worth required above is physically located in the

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[4] NPR, pp. 7–8.

[5] Docket No. 92–19, Notice of Proposed Rulemaking, p. 9.

[6] NPR, p. 6, footnote 6.

United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Performance) is in effect:

* * * * *

(4) Semiannual current statement of the book value or current market value of any assets physically located within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) Semiannual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list filed semiannually of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of net worth;

* * * * *

(e) The following schedule may be applied to determine the minimum coverage required for indemnification of passengers in the event of nonperformance of water transportation for those operators who have not elected to qualify by self-insurance; and can provide evidence (in the form of an affidavit by the operator's Chief Executive Officer or other responsible corporate officer) of a minimum of five years of operation in United States trades, with a satisfactory explanation of any claims for nonperformance of transportation:

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-31825 Filed 12-30-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 64, 65, and 69

[CC Docket No. 91-141, FCC 92-552]

Expanded Interconnection With Local Telephone Company Facilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion pursuant to 47 CFR 1.108, modifies the requirement that the initial LEC expanded interconnection tariffs encompass all end offices, serving wire centers, and other points relevant for calculating special access rates. The Commission instead requires the LECs to file initial tariffs for only a subset of their central offices, and to establish new procedures for the tariffing of additional central offices thereafter. This change will permit the Commission to target use of its administrative resources in the initial implementation of expanded interconnection to achieve more fully its precompetitive goals in the near term, as well as to reduce the burden on all interested parties of the initial implementation process.

EFFECTIVE DATE: February 16, 1993. The requirements that Southwestern Bell Telephone Co. (SW Bell) file a list of central offices by December 28, 1992 and that interconnectors be permitted to request additional offices on or before January 15, 1993 shall be operative upon the release of the Order.

FOR FURTHER INFORMATION CONTACT: Douglas L. Slotten, 202-653-6975, or Linda L. Haller, 202-632-1298, Common Carrier Bureau, Policy and Program Planning Division.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in CC Docket No. 91-141, adopted and released on December 18, 1992.

The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., room 239, Washington, DC 20554.

Synopsis of Memorandum Opinion and Order

1. The Commission modifies the requirement, adopted in 57 FR 54323 (Nov. 18, 1992), that each Tier 1 LEC, other than the Puerto Rico Telephone Co., file tariffs by February 16, 1993, making expanded interconnection available in all of their central offices for DS1 and DS3 interstate special access service should be modified. We herein revise the filing requirement to apply initially only to a subset of the LEC central offices. Commission resources would be targeted to ensure effective implementation of expanded interconnection in those central offices of interest to interconnectors. This approach should benefit LECs and interconnectors, by reducing the LEC costs involved in surveying central offices for adequacy of space and preparation of tariffs and exemption requests, and by enabling interconnectors not to examine and respond to the LEC's proposed tariffs and space exemption requests for central offices in which they are not interested in the near term.

2. Any subset for initial tariffing must include those central offices in which interconnectors are likely to desire expanded interconnection for DS1 and DS3 service in the near future, such as the first year that expanded interconnection is available. Based on the record before us, we conclude that the initial subset of central offices to be tariffed in February 1993 should, with the exception of SW Bell, be based on the specific lists developed by each LEC of the central offices in which expanded interconnection is likely to be requested, as supplemented with additional central offices requested by interconnectors in the next few weeks. For SW Bell, which has not submitted a list, we here define a subset of central offices, which we also will permit interconnectors to supplement.

3. The subject Tier 1 LECs, other than SW Bell, have already filed lists of offices that they propose should be included in their February 1993 tariff filings as the central offices in which they will offer expanded interconnection for DS1 and DS3 services. In total, the lists would have these Tier 1 LECs tariffing more than 1000 central offices in their initial expanded interconnection tariff filings. We here require the subject LECs to tariff expanded interconnection for interstate DS1 and DS3 special access service in those central offices in their initial tariff filings of February 16, 1993.

4. SW Bell has not filed a list of central offices for which it would offer DS1 and DS3 expanded interconnection in its initial tariff filings. Therefore, we direct SW Bell to file a list with the Commission by December 28, 1992 identifying the 250 largest central offices in its service territory. It shall base its determination on the number of equivalent DS1 circuits in a given central office. For this purpose, a DS3 circuit shall be deemed to have 28 DS1 circuits. SW Bell also should serve copies of its list on all parties on the service list in this proceeding by overnight delivery. These lists must be provided promptly in order to permit interconnectors to request any additions prior to the January 15, 1993, deadline established below. Accordingly, we find good cause to make this requirement effective less than 30 days after Federal Register publication.

5. These lists of offices should ensure that LECs offer expanded interconnection at most of the central offices in which interconnection will be requested. We expect, however, that these lists will not include all the central offices in which interconnectors will desire to obtain expanded interconnection for DS1 and DS3 service

in the near term. Therefore, a procedure to allow interconnectors to add offices to the list before February 16, 1993, is essential. Given our requirement that a LEC request an exemption based on lack of space at the time its tariff for that office is filed, we conclude that it would be better if a certain date for interconnectors to request the addition of central offices to the LEC lists were established, rather than leaving the time open for interconnectors to request additional central offices to be included in the LECs' February tariff filing.

6. Therefore, we require interconnectors who desire that additional central offices be included in a LEC's February 16, 1993, tariff filing to submit such requests to that LEC no later than January 15, 1993. Any interconnector requests for additional central offices received by the LECs after January 15, 1993, should be processed in accordance with the procedures described below. Because the central offices in which expanded interconnection for DS1 and DS3 service is to be tariffed in February 1993 must be identified promptly to permit the smooth implementation of expanded interconnection, we find that the procedures we set forth for establishing the list of central offices to be included in those tariffs must become effective immediately. Accordingly, we find good cause exists to make these procedures effective less than 30 days after Federal Register publication. Interconnectors should only request those additional offices where they intend to seek interconnection within the twelve months following the effectiveness of the expanded interconnection tariffs. We anticipate that only a limited number of interconnector requests will be received by the LECs.

7. Finally, we will not permit the LECs to assess a nonrecurring charge upon interconnectors submitting a bona fide request to cover the costs of surveying the central office for space availability. We also permit interconnectors to request the addition of central offices between January 16, 1993, and the date the initial tariffs become effective. The LECs shall file any tariff revisions necessary to respond to these requests 45 days after receipt of the request, effective on 45 days notice. Any interconnector requests received by the LECs after January 15, 1993, but before February 17, 1993, shall be deemed to have been made on February 16, 1993. This procedure will simplify our administrative process and ensure that expanded interconnection for any central offices for which interconnectors make a bona fide request during this period will not become effective before expanded interconnection is available in the offices included in the February 16, 1993, tariff filing.

8. We also conclude that, for the longer term, the LECs must include in their expanded interconnection tariffs provisions establishing a procedure to add central offices upon receiving a bona fide request from an interconnector after the initial expanded interconnection tariffs become effective. As with services other than DS1 and DS3, the tariffs must provide that tariff revisions adding central offices in which expanded interconnection is offered will be filed within 45 days of receipt of a bona fide request, to be effective upon 45 days notice.

9. We also modify the requirements for the filing of petitions for exemptions from the physical collocation requirement with respect to specific central offices based on space availability. The LECs will be required to request space exemptions from physical collocation in any central office included in its February 16, 1993, tariff filing at the time those tariffs are filed. With respect to other offices, LECs must file petitions for exemption based on insufficient space at the same time that they file tariff revisions offering expanded interconnection at those central offices.

Ordering Clauses

10. Accordingly, *It is ordered,* That pursuant to authority contained in sections 1, 4(i), 201–205 and 214(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, and 214(d), and pursuant to § 1.108 of the Commission's rules, 47 CFR 1.108, the Commission reconsiders its decision in Expanded Interconnection Order on its own motion to the extent specified herein.

11. *It is further ordered,* That SW Bell, by December 28, 1992, shall file a list of 250 central offices as described above with the Commission and serve all parties to this proceeding by overnight delivery.

12. *It is further ordered,* That the policies and requirements adopted herein shall be effective on February 16, 1993, except for the requirements that SW Bell file a list of central offices by December 28, 1992 and that interconnectors be permitted to request additional offices on or before January 15, 1993, which shall be operative upon the release of this Order.

List of Subjects

47 CFR Parts 61 and 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–31714 Filed 12–30–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–216; RM–8068]

Radio Broadcasting Services; Clearwater and Rozel, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 254C2 for Channel 254A at Clearwater, Kansas, and modifies the construction permit for Channel 254A to specify operation on the new channel in response to a petition filed by Gary Violet. See 57 FR 45020, September 30, 1992. The coordinates for Channel 254C2 are 37–23–31 and 97–35–55. We shall also delete Channel 254C1 at Rozel Kansas, as no comments were received supporting retention of a channel in the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 11, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–216, adopted December 4, 1992, and released December 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 254A and adding Channel 254C2 at Clearwater and by removing Channel 254C1, Rozel.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-31841 Filed 12-30-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-198; RM-8056]

Radio Broadcasting Services; Larose, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Electronics Unlimited, Inc., permittee of Station KMZM-FM, Channel 262A, Larose, Louisiana, substitutes Channel 262C1 for Channel 262A at Larose and modifies Station KMZM-FM's construction permit to specify operation on the higher powered channel. *See* 57 FR 44354, September 25, 1992. Channel 262C1 can be allotted to Larose in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.6 kilometers (14.7 miles) south to accommodate Electronics' desired site. The coordinates for Channel 262C1 are 29-22-00 and 90-26-50. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 11, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-198, adopted December 2, 1992, and released December 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 262A and adding Channel 262C1 at Larose.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-31842 Filed 12-30-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-215; RM-8063]

Radio Broadcasting Services; Preston, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 276C3 for Channel 276A at Preston, Minnesota, and modifies the license for Station KFIL-FM to specify operation on the new channel in response to a petition filed by KFIL, Inc. See 57 FR 44548, September 28, 1992. The coordinates for Channel 276C3 at Preston are 43-44-38 and 91-54-04. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 28, 1993.

FOR ADDITIONAL INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92-215, adopted December 4, 1992, and released December 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 276A and adding Channel 276C3 at Preston.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-31843 Filed 12-30-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Ost Docket No. 1; Amdt. 1-251]

Organization and Delegation of Powers and Duties; Redelegations of Authority to the Research and Special Programs Administrator, Federal Highway Administrator, and Federal Railroad Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has redelegated to the Administrator, Research and Special Programs Administration (RSPA); Administrator, Federal Railroad Administration (FRA); and Administrator, Federal Highway Administration (FHWA), certain authority vested in the President by the Oil Pollution Act of 1990 (OPA 90) and delegated to the Secretary by Executive Order (E.O.) No. 12777. Specifically, this rule redelegates authority to the Administrator, RSPA, to issue regulations requiring owners or operators of non-marine transportation facilities to prepare and, in certain cases, submit response plans; it also redelegates to the Administrators of RSPA, FRA and FHWA the authority to review and approve the submitted response plans. The purpose of this rulemaking is to amend a section of 49 CFR part 1 to reflect these redelegations.

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Monniere, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, room 8405, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-4346.

Mr. Steven Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C-50, U.S. Department of Transportation, room 10424, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-9306

SUPPLEMENTARY INFORMATION: In response to several major oil spills, Congress passed OPA 90 (Public Law 101–380, August 18, 1990, 104 Stat. 484) in order to prevent, respond to, and pay for oil and hazardous substance spills. Prevention includes containment. The Secretary received increased authority under OPA 90 and E.O. 12777 (56 FR 54757) to promulgate regulations to protect the environment from oil and hazardous substance spills during transportation by motor vehicle, railroad or pipeline. In a March 11, 1992 final rule (57 FR 8581), the Secretary delegated a portion of this authority to the Commandant, United States Coast Guard; Administrator, Maritime Administration; and Administrator, RSPA. However, the March 11, 1992 delegation did not address the authority under E.O. 12777 to require, review, and approve response plans for pipelines, motor carriers, and railroads.

This regulation reflects the redelegation of that authority to the Administrator, RSPA; Administrator, FRA; and Administrator, FHWA. In addition, the March 11, 1992 redelegation did not address the authority under OPA 90 to adjust liability limits for vessels, deepwater ports, pipelines, motor carriers, and railroads. This authority will be delegated at a later date.

Because this rulemaking, which makes changes that are necessary to reflect the delegations under OPA 90 and E.O. 12777, relates to Departmental management, organization, procedure, and practice, notice and comment on it are unnecessary and it may be made effective fewer than thirty days after publication in the **Federal Register**. Therefore, this final rule is effective on the date of publication.

List of Subjects in 49 CFR Part 1

Authority delegations, (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.48 is amended by adding a new paragraph (jj) to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(jj) Carry out the functions and exercise the authority delegated to the Secretary in section 2(d)(2) of Executive Order 12777 (3 CFR, 1991 Comp; 56 FR 54757), with respect to highway transportation, relating to the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of motor carriers, subject to the Federal Water Pollution Control Act (33 U.S.C. 1321), to operate without approved response plans.

3. Section 1.49 is amended by adding a new paragraph (ii) to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(ii) Carry out the functions and exercise the authority delegated to the Secretary in section 2(d)(2) of Executive Order 12777 (3 CFR, 1991 Comp; 56 FR 54757), with respect to rail transportation, relating to the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of railroads, subject to the Federal Water Pollution Control Act (33 U.S.C. 1321) to operate without approved response plans.

4. Section 1.53 is amended by redesignating paragraph (k) as (k)(1) and adding a new paragraph (k)(2) to read as follows:

§ 1.53 Delegations to the Administrator of the Research and Special Programs Administration.

* * * * *

(k)(1) * * *

(2) Carry out the functions and exercise the authority delegated to the Secretary in section 2(d)(2) of Executive Order 12777 (3 CFR, 1991 Comp; 56 FR 54757) relating to the issuance of regulations requiring the owners or operators of pipelines, motor carriers, and railroads, subject to the Federal Water Pollution Control Act (33 U.S.C. 1321), to prepare and submit response plans. For pipelines subject to the Federal Water Pollution Control Act (33 U.S.C. 1321), this authority includes the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of pipelines to operate without approved response plans.

Issued on: December 24, 1992.

Andrew H. Card, Jr.,

Secretary.

[FR Doc. 92–31815 Filed 12–30–92; 8:45 am]

BILLING CODE 4910–62–M

Proposed Rules

Federal Register
Vol. 57, No. 252
Thursday, December 31, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 97

[Docket No. 91–196–1]

Fee Increase for Overtime Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to increase the hourly rates charged for Sunday, holiday, or overtime work performed by inspectors of the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture, at laboratories, border ports, seaports, and airports. This action is necessary in order to reflect salary increases for Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91–656), as implemented by Executive Orders of the President, and to reflect allowable costs associated with the implementation of the Debt Collection Act of 1982.

DATES: Consideration will be given only to comments received on or before February 1, 1993.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91–196–1. Comments may be inspected at room 1141 of the South Building, 14th Street and Independence Avenue, SW., Washington DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: George H. McFadden, Director, Resource Management Support, PPQ, APHIS, USDA, room 458, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7764, or Louise Rakestraw Lothery, Director, Resource Management Support Staff, VS, APHIS, USDA, room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D (referred to below as "the regulations"), require inspection, laboratory testing, certification, or quarantine of certain animals, animal byproducts, plants, plant products, or other commodities or articles intended for importation into, or exportation from, the United States. With some exceptions, explained below, when these services must be provided by an APHIS employee on a Sunday or holiday, or at any time outside the APHIS employee's regular duty hours, the Government charges an hourly fee for the services in accordance with 7 CFR part 354 and 9 CFR part 97.

Each year these hourly fees are reviewed and a cost analysis is performed to determine if they are adequate to recover the cost of providing these services. The cost analysis is based on data such as billing and collection services, anticipated costs due to increases in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970, and increases affecting Federal employees such as travel and benefit costs.

As a result of a January 1992 pay raise for Federal employees, increased costs of the retirement system in 1992, increased health insurance and travel costs, and increased costs associated with billing and collection services, APHIS proposes to increase the service fees relative to these increases. Thus, the regulations would be amended by:

(1) Increasing the hourly rate charged a person, firm or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to certain inspection, laboratory testing, certification, or quarantine, and who requires the services of an APHIS employee on a Sunday or holiday, or at any other time outside the employee's regular tour of duty; and

(2) Increasing the hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service.

With certain exceptions explained below, the hourly rates charged would be increased by $4.28 per hour for services performed on a Sunday and by $3.88 per hour for services performed on a holiday or any other period outside the regular tour of duty. The new rates would be $47.96 and $37.84, respectively.

The hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service would be increased as follows: For services performed outside the regularly established hours of service on a Sunday, the rate would be increased by $3.84 per hour, to $39.36. For services performed outside the regularly established hours of service on a holiday or any other period, the rate would be increased by $3.48 per hour, to $30.64.

There are exceptions to these hourly fees. Specifically, owners and operators of aircraft receive inspection services without charge during regularly established hours of service on a Sunday or holiday. Also, there is a $25 limit for all private aircraft or private vessel inspection services performed on a Sunday, holiday, or at any time after 5 p.m. or before 8 a.m. on a weekday, by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture.

During 1991 and 1992, APHIS implemented several user fees that cover the cost of providing certain agricultural quarantine and inspection services (see 7 CFR 354.3). APHIS currently charges user fees for air passengers and commercial aircraft, vessels, trucks, and railroad cars arriving at ports of entry in the United States from outside the United States.

If the owner or operator of a commercial aircraft, vessel, truck or railroad car is subject to and pays an APHIS user fee, APHIS does not charge a separate fee for overtime service, unless cargo is inspected separately from the means of conveyance and outside of normal business hours. In addition, airlines are not charged a separate overtime fee for passenger inspection services required for any aircraft, if a passenger on the arriving aircraft has paid the airline passenger APHIS user fee for that flight.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by USDA, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on information compiled by the Department, we estimate that during calendar year 1991 APHIS provided an average of 11,445 hours per week of services for which charges were assessed. These services were requested by thousands of entities. With full implementation of APHIS user fees, we expect the number of hours of reimbursable overtime that we charge to decrease significantly. However, it is not possible at this time to determine the actual effect.

Under these circumstances, the Administrator of APHIS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

Accordingly, 7 CFR part 354 and 9 CFR part 97 would be amended as follows:

TITLE 7—[AMENDED]

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for 7 CFR part 354 would continue to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(c).

§ 354.1 [Amended]

2. In paragraph (a)(1) introductory text of § 354.1, "$43.68" would be removed and "$47.96" added in its place, and "$33.96" would be removed and "$37.84" added in its place.

3. In paragraph (a)(1)(iii) of § 354.1, "$35.52" would be removed and "$39.36" added in its place, and "$27.16" would be removed and "$30.64" added in its place.

TITLE 9—[AMENDED]

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

4. The authority citation for 9 CFR part 97 would continue to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(d).

§ 97.1 [Amended]

5. In paragraph (a) introductory text of § 97.1, "$43.68" would be removed and "$47.96" added in its place, and "$33.96" would be removed and "$37.84" added in its place.

6. In paragraph (a)(3) of § 97.1, "$35.52" would be removed and "$39.36" added in its place, and "$27.16" would be removed and "$30.64" added in its place.

Done in Washington, DC, this 23rd day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-31671 Filed 12-30-92; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

7 CFR Part 1435

RIN: 0560-AC91

Sugar Marketing Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: CCC is proposing to amend the sugar marketing assessment regulations to reflect changes required by amendments to the statutory provisions which authorize the assessments, to clarify the regulations, and to enhance the collection of the assessments.

DATES: Comments must be received on or before February 1, 1993 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments should be mailed or delivered to the Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service, room 3090, South Agriculture Building, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013-2415 or may be FAXed to (202) 690-2186. Comments received may also be inspected in room 3727 between 9 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Robert D. Barry, Director, Sweeteners Analysis Division, Agricultural Stabilization and Conservation Service, room 3727, South Agriculture Building, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013-2415; telephone: 202-720-3391.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major". It has been determined that the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

The Executive Vice President, Commodity Credit Corporation (CCC), certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Consequently, a Regulatory Flexibility Analysis is not required under the provisions of the Regulatory Flexibility Act.

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State law to the extent such laws are not inconsistent with the provisions of this proposed rule. This proposed rule is not retroactive. Before any action may be brought regarding the provisions of this proposed rule, the administrative appeal rights set forth at 7 CFR part 780 must be exhausted.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed for this proposed rule.

This proposed rule requires an information collection form CCC–80 which has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and has been assigned OMB No. 0560–0134. The public reporting burden for these collections of information is estimated to vary from 60 to 120 minutes per response, with an average of 90 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The program covered by this proposed rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulatory Reform; Less Burdensome or More Efficient Alternatives

The Department of Agriculture (the Department) is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this proposed rule.

Statutory Background

Section 1105(c) of the Omnibus Budget Reconciliation Act of 1990 (the Reconciliation Act) amended section 206(i) of the Agricultural Act of 1949 (the 1949 Act) to provide that, only for the 1991 through 1995 crops of sugarcane and sugar beets, the first processor of sugarcane or sugar beets shall remit to CCC a nonrefundable marketing assessment in an amount equal to 0.18 cents per pound of raw cane sugar processed by the processor from domestically produced sugarcane and an amount equal to 0.193 cents per pound of beet sugar processed by the processor from domestically produced sugar beets. The amendment also provided for the imposition of civil penalties if any person were to fail to remit such assessments or to comply with such requirements for recordkeeping or otherwise which are required to carry out section 206(i).

Because the 1991 crop year was to begin on July 1, 1991, an interim rule was promulgated to implement these assessments, which became effective on June 19, 1991 (56 FR 28034). Comments on the interim rule were received from 10 interested parties. Based on consideration of the comments received, a final rule was promulgated effective on November 1, 1991 (56 FR 55606).

Subsequently, the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (the 1991 Act, also known as the technical corrections to the 1990 Farm Act), which became effective on December 13, 1991, amended section 206(i) of the 1949 Act, to (1) provide that the assessments would apply only for marketings of raw cane sugar and beet sugar during the 1992 through 1996 fiscal years, (2) specify the timing of collections of marketing assessments, and (3) clarify that the assessments would apply to sugar derived from sugar beet molasses or sugarcane molasses.

In this proposed rule, CCC is proposing amendments to the regulations to reflect the statutory amendments enacted in the 1991 Act. At the same time, CCC is proposing various other amendments to ease the regulatory burden of the assessments and to further clarify certain provisions of the regulations.

Discussion of Proposed Revisions

A. The following proposed revisions to 7 CFR part 1435 are the result of the amendments made by the 1991 Act to section 206(i) of the 1949 Act:

1. As originally enacted, the marketing assessments were "[e]ffective only for each of the 1991 through 1995 crops" of sugarcane and sugar beets. The crop for these commodities begins on July 1 and ends on June 30; specifically, the 1991 crop began on July 1, 1991, and ended on June 30, 1992, and the 1995 crop will begin on July 1, 1995, and end on June 30, 1996. The amendments made by the 1991 Act provided that the assessments would be effective only for marketings of raw cane sugar and beet sugar "during the 1992 through 1996 fiscal years." This period extends from October 1, 1991, through September 30, 1996. On the other hand, section 206(j) provides that "[t]his section [i.e., section 206] shall be effective only for the 1991 through 1995 crops of sugar beets and sugarcane."

CCC interprets these provisions to mean that Congress intended the assessments to apply to the marketing, during the 1992 through 1996 fiscal years, of sugar produced from the 1991 through 1995 crops of sugar beets and sugarcane. As a consequence, sugar processed during the first three months of the 1996 crop year (July through September 1996), which is not part of the 1995 crop year production, shall not be subject to a marketing assessment, even if it is marketed during the final quarter of fiscal year 1996.

Since the original interim rule, effective at the beginning of the 1991 crop year, provided for the payment of assessments on sugar processed—rather than marketed—during a month, assessments were collected on some sugar, produced after July 1, 1991, from the 1991 crop of sugarcane or sugar beets, that was marketed during fiscal year 1991. There is nothing in the 1991 Act to indicate that Congress intended that such assessments be refunded. To the contrary, the original section 206(i) as enacted in the Reconciliation Act described both the raw cane sugar assessment and the beet sugar assessment as "nonrefundable" and explicitly provided that the assessments "shall be nonrefundable." The 1991 Act did not change these provisions. Accordingly, CCC will not refund assessments collected during July through September 1991.

However, CCC does not believe that Congress, by changing in the 1991 Act from a crop year to a fiscal year basis for the collection of assessments, intended to subject to a second assessment any sugar that was processed (and subjected to an assessment) during the period July 1 through September 30, 1991, but not marketed until after the beginning of fiscal year 1992.

CCC proposes to amend § 1435.203 to provide, in paragraph (d), for a credit to first processors who paid an assessment on sugar produced in July 1991 through September 1991 and then paid a second assessment on such sugar which was marketed after September 30, 1991. In addition, CCC proposes to amend § 1435.200 (a) and (d) to provide that the marketing assessment applies to the marketing by first processors of all raw cane sugar and beet sugar produced from the 1991 through 1995 crops of domestically produced sugarcane or sugar beets, respectively, and marketed during the 1992 through 1996 fiscal years. This revision is intended to clarify that sugar processed after June 30, 1996 (i.e., sugar which is part of the 1996 crop year), shall not be subject to a marketing assessment, even if it is marketed during fiscal year 1996 or held in inventory on September 30, 1996.

2. With respect to the timing of collections of marketing assessments, the amendment made by the 1991 Act to section 206(i)(3)(A) of the 1949 Act provides as follows:

> (A) TIMING.—Marketing assessments required under this section shall be collected on a monthly basis and shall be remitted to the Commodity Credit Corporation within 30 days after the end of each month. Any cane sugar or beet sugar processed during a fiscal year that has not been marketed by September 30 of that year shall be subject to assessment on that date. The sugar shall not be subject to a second assessment at the time that it is marketed.

CCC proposes to revise §§ 1435.200(d) and 1435.203(a) of the regulations to require that marketing assessments be remitted by the thirtieth day after the end of the month in which the sugar was marketed.

In addition, § 1435.203(c) of the regulations currently requires that CCC receive a remittance prior to the end of the month in which the remittance is due, which is the month following the month in which the sugar covered by the assessment was marketed. This presents an unnecessary potential liability to first processors who may experience mail delays that could result in the assessment of a penalty. Accordingly, CCC proposes to replace the current provision and to provide in § 1435.203(a) that mailed remittances shall be considered remitted timely if they are postmarked by the thirtieth calendar day after the end of the month in which the sugar subject to the assessment was marketed and that electronic remittances must be received by CCC by the thirtieth calendar day after the end of the month in which the sugar subject to the assessment was marketed.

As amended, section 206(i)(3) of the 1949 Act requires that assessments be "collected on a monthly basis." However, some first processors do not maintain production and marketing records on a calendar month basis but rather on a weekly basis. Such processors' accounting months may begin and/or end several days before or after the dates of calendar months. CCC believes that it is desirable to accommodate such processors, so long as assessments are remitted and received on a regular monthly basis as required by section 206(i)(3)(A) of the 1949 Act. CCC proposes to add a new provision as § 1435.203(b)(2) to facilitate the payment of marketing assessments by processors that do not operate on a calendar month basis by providing that these processors may pay their assessments to CCC based on marketings that include several extra days or several fewer days than the calendar month, consistent with a processor's standard accounting months. However, the marketing assessments must be remitted monthly and by the due dates specified.

CCC further proposes to revise § 1435.203(e) of the regulations to provide that each year, the first processor of sugar from sugarcane or sugar beets (including sugar from sugarcane molasses and from sugar beet molasses) shall inventory sugar on hand that was produced during the fiscal year but not marketed by September 30 and remit to CCC the marketing assessment for that sugar along with the assessment for the September marketings. Such sugar would not be subject to a second assessment at the time it is marketed.

3. The amendments made by the 1991 Act clarified that the assessments apply to beet sugar or raw cane sugar produced from sugar beet molasses or sugarcane molasses. Thus, if a processor operates a "desugarization" facility to extract additional sugar from molasses that has resulted from the previous processing of sugar beets or sugarcane, such sugar will be subject to an assessment. These amendments confirmed an interpretation of the original statutory provisions incorporated in the final rule published on November 1, 1991. However, the question has arisen whether a processor who sells molasses will be subject to an assessment if another person uses the molasses for desugarization. An identical issue would arise with respect to the sale of thick juice.

CCC proposes to amend the definition of "first processor" in § 1435.201 to clarify that those entities that produce beet sugar or raw cane sugar from molasses or thick juice will be considered first processors. This will ensure that sugar produced through "desugarization" processes is assessed and will not create a cumbersome requirement for traditional first processors to determine how their molasses or thick juice production is used after it has been sold. CCC also proposes to revise the definition of "crop year" in § 1435.201 to clarify the crop year to which sugar produced by the desugarization of molasses or processing of thick juice should be assigned.

B. The following proposed revisions to 7 CFR part 1435 are to enhance the collection process of the sugar marketing assessment system and to further clarify the regulations:

1. Pursuant to § 1435.202(b), the assessment on raw cane sugar is determined according to the raw value of the sugar marketed. Because the raw value of raw cane sugar may not be finally established until after it has been marketed, it may occur that the raw value of such sugar cannot be precisely determined by the date on which an assessment is due. CCC proposes to add a new provision as § 1435.203(c) to provide that, if the exact raw value of the sugar marketed cannot be determined when the assessment is due, the first processor shall estimate the raw value based on recent experience. If an

adjustment is later determined to be necessary, the first processor would reflect the adjustment on a corrected form CCC–80. In addition, § 1435.401 of the regulations provides a more complete definition of "raw value" than is currently provided for in § 1435.201. Accordingly, CCC proposes to amend the definition of "raw value" in § 1435.201 to conform to the definition of "raw value" in § 1435.401.

2. Section 408(j) of the 1949 Act provides that "[a]ny term defined in the Agricultural Adjustment Act of 1938 shall have the same meaning when used in this Act. Section 359b(d)(4) of the 1938 Act defines the term "market"—for purposes of the provisions relating to sugar marketing allotments—as "to sell or otherwise dispose of in commerce in the United States (including, with respect to any integrated processor and refiner, the movement of raw cane sugar into the refining process)." CCC is proposing to adopt this definition. CCC is further proposing to clarify in this definition that the forfeiture of sugar used as the collateral for a price support loan is a marketing of such sugar.

List of Subjects in 7 CFR Part 1435

Loan programs/agriculture, Marketing allotments, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, 7 CFR part 1435 is proposed to be amended as follows:

PART 1435—SUGAR

1. The authority citation for part 1435 continues to read as follows:

Authority: 7 U.S.C. 1359aa–1359jj, 1421, 1423, 1446g; 15 U.S.C. 714b and 714c.

2. Subpart—Sugar Marketing Assessments, consisting of sections 1435.200–1435.206 is revised to read as follows:

Subpart—Sugar Marketing Assessments

Sec.
1435.200 General statement.
1435.201 Definitions.
1435.202 Amount of the marketing assessment.
1435.203 Remittance.
1435.204 Civil penalties and interest.
1435.205 Maintenance and inspection of records.
1435.206 Refunds.

SUBPART—SUGAR MARKETING ASSESSMENTS

§ 1435.200 General statement.

(a) This subpart sets forth the terms and conditions for the payment to the Commodity Credit Corporation (CCC) of marketing assessments for beet sugar and raw cane sugar produced during the 1991 through 1995 crop years and marketed during the 1992 through 1996 fiscal years.

(b) The marketing assessment applies to: (1) The marketing by first processors of all raw cane sugar produced from the 1991 through 1995 crops of domestically produced sugarcane or sugarcane molasses and marketed during the 1992 through 1996 fiscal years; and

(2) The marketing by first processors of all beet sugar produced from the 1991 through 1995 crops of domestically produced sugar beets or sugar beet molasses and marketed during the 1992 through 1996 fiscal years.

(c) All first processors of sugar beets and sugarcane are responsible to remit the marketing assessments.

(d) The marketing assessments shall be due and payable to CCC by the thirtieth calendar day following the end of the month in which the beet sugar or raw cane sugar was marketed.

§ 1435.201 Definitions.

Beet sugar means sugar, whether or not principally of crystalline structure, which is processed directly or indirectly from domestically produced sugar beets (including sugar produced from sugar beet molasses).

Crop year and *crop* shall have the same meanings as are ascribed to such terms in § 1435.3 of this part, with the customary allowance for a continuous harvest as provided for in § 1435.5(a)(2). In addition, beet sugar or raw cane sugar processed from molasses or thick juice produced from domestically produced sugar beets or sugarcane shall be considered to have been produced during the crop year in which such sugar beets or sugarcane was harvested.

First processor means a person who commercially produces beet sugar or raw cane sugar, directly or indirectly, from domestically produced sugar beets or sugarcane, or from molasses or thick juice derived from domestically produced sugar beets or sugarcane.

Fiscal year means CCC's fiscal year which runs from October 1 to September 30.

Integrated processor-refiner means a first processor of raw cane sugar who also refines raw cane sugar into refined sugar.

Market or marketing means the sale or disposition of raw cane sugar or beet sugar in commerce in the 50 United States, the several territories, the District of Columbia, and Puerto Rico, including, with respect to any integrated processor-refiner, the movement of raw cane sugar into the refining process. For purposes of this subpart, the forfeiture to the CCC of raw cane sugar or beet sugar used as collateral for a price support loan is also considered a marketing.

Raw cane sugar means any sugar, cane syrup or edible molasses, whether or not principally of crystalline structure, processed from domestically produced sugarcane or sugarcane molasses.

Raw value shall have the same meaning as is ascribed to such term in § 1435.401 of this part.

§ 1435.202 Amount of the marketing assessment.

(a) The amount of the beet sugar marketing assessment to be remitted shall be the sum determined by multiplying the number of pounds of beet sugar marketed in a calendar month by 0.193 cents.

(b) The amount of the marketing assessment on raw cane sugar to be remitted to CCC shall be the sum determined by multiplying the number of pounds, raw value, of raw cane sugar marketed, or estimated to be marketed in accordance with § 1435.203(c)(1) of this subpart, in a calendar month by 0.18 cents.

§ 1435.203 Remittance.

(a)(1) First processors shall remit marketing assessments to CCC by the thirtieth calendar day following the end of the month in which the beet sugar or cane sugar subject to the assessment was marketed.

(2) Mailed remittances will be considered timely if they are postmarked not later than the thirtieth calendar day following the month in which the beet sugar or cane sugar subject to the assessment was marketed.

(3) Electronic remittances must be received by CCC by the thirtieth calendar day following the month in which the beet sugar or cane sugar subject to the assessment was marketed.

(4) Any processor who fails to file a remittance by the date on which it is due shall be assessed a civil penalty and interest in accordance with § 1435.204 of this subpart.

(b)(1) First processors shall prepare and submit a fully and accurately completed form CCC–80 each month that shows the quantity of:

(i) Beet sugar marketed during the previous calendar month, and

(ii) Raw cane sugar, raw value, marketed during the previous calendar month.

(2) First processors who do not operate on a calendar month basis may pay their assessments based on marketings that include several extra days or fewer days than the calendar month reporting period, consistent with

the processor's standard accounting months. However:

(i) Assessments must be paid on all marketings of specific crop year sugar in the fiscal year it is due, and

(ii) The marketing assessments must be remitted monthly and by the dates specified in paragraph (a) of this section.

(3) The entire assessment that is due and payable shall be remitted with the Form CCC–80.

(c)(1) If, when a raw sugar assessment is due and payable, the first processor cannot determine the exact raw value of such sugar, an estimate of raw value based on the recent experience of the processor shall be made and the assessment submitted on the estimated quantity.

(2) Whenever an assessment is based on an estimate of raw value pursuant to paragraph (c)(1) of this section, any necessary adjustments to the quantity of raw sugar subject to the assessment shall be made by filing a corrected CCC–80 no later than 30 days after the last day of the month in which the estimated assessment was paid. If, according to the corrected CCC–80:

(i) The assessment was underpaid, the first processor shall remit the additional assessment due with the corrected CCC–80, and

(ii) If the assessment was overpaid, the first processor shall subtract the overpayment from any assessment due at the time the corrected CCC–80 is filed, or if none is due at that time, from the assessment next due.

(d) Any first processor, who paid an assessment on beet sugar or raw cane sugar processed during the first three months of the 1991 crop year (July 1 through September 30, 1991) and then paid another assessment upon the marketing of the same sugar after September 30, 1991, may receive a credit for any assessment paid on such sugar prior to fiscal year 1992. The credits will be handled by procedures to be developed by the Controller, CCC.

(e) By October 30 of each year, first processors shall determine the quantity of beet sugar or raw cane sugar on hand that was produced during the preceding fiscal year but not marketed by September 30 of such preceding fiscal year and shall remit a marketing assessment to CCC as if the sugar had been marketed in September of such preceding fiscal year. Such sugar shall not be subject to a second assessment when it is marketed.

(f) First processors shall send remittances and CCC–80 forms as specified by CCC.

§ 1435.204 Civil penalties and interest.

(a) A first processor shall be liable for a civil penalty of up to 100 percent of the relevant national average price-support loan rate times the quantity of raw cane sugar or beet sugar involved in the violation if the processor:

(1) Fails to remit, on a timely basis, the entire amount of any marketing assessment in accordance with this subpart;

(2) Fails to submit form CCC–80 fully and accurately completed; or

(3) Fails to maintain and permit inspection of records as required by § 1435.205 of this subpart.

(b) In addition to any civil penalty assessed in accordance with paragraph (a) of this section, interest on unpaid assessments or deficiencies in assessments paid shall be due and payable at the rate specified in part 1403 of this chapter, beginning on the first day of the month after the marketing assessment was due in accordance with § 1435.203. Such interest shall continue to accrue until such amount is paid. However, if full payment of an assessment is received within 30 calendar days of the date on which the assessment was due, no interest shall apply.

(c) The Controller, CCC, shall access civil penalties and interest.

(d) Affected first processors may appeal civil penalties by filing a notice of appeal within 15 calendar days of receipt of certified written notification by the Controller, CCC, of such assessment of civil penalties. Such notice of appeal shall be sent to the Director, National Appeals Division, ASCS, P.O. Box 2415, Washington, DC 20013–2415.

§ 1435.205 Maintenance and inspection of records.

Representatives of CCC shall have the right to have access to the premises of the first processor in order to inspect, examine, and make copies of the books, records, accounts, and other data as are deemed necessary by CCC or CCC's agents to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the first processor for not less than three years from the date the remittance is made to CCC.

§ 1435.206 Refunds.

Marketing assessments are nonrefundable. However, upon presentation of evidence acceptable to the Controller, CCC, adjustments to an assessment may be made by CCC to reflect the actual marketings of beet sugar or raw cane sugar, or a first processor may adjust the amount of the assessment due in accordance with § 1435.203 of this subpart.

Signed at Washington, DC this 23rd day of December 1992.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–31840 Filed 12–30–92; 8:45 am]

BILLING CODE 3410–05–M

Rural Electrification Administration

7 CFR Part 1755

RIN 0572–AA57

Specification for Filled Buried Wires

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR Part 1755, Telecommunications Standards and Specifications for Materials, Equipment and Construction, by rescinding REA Bulletin 345–86, REA Specification for Filled Buried Service Wire, PE–86, and codifying the revised specification at 7 CFR 1755.860, REA Specification for Filled Buried Wires. The revised specification: 1) Allows the use of 24 AWG conductor sizes; 2) Allows 3 pair wire design; 3) Includes raw material requirements for insulating and jacketing compounds; and 4) Establishes end product requirements associated with the options stated above.

DATES: Comments must be received by REA or postmarked no later than February 1, 1993.

ADDRESSES: Comments should be mailed to Donald M. Van Bellinger, Director, Telecommunications Standards Division, Rural Electrification Administration, room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. REA requests an original and three copies of all comments (7 CFR part 1700). Comments received may be inspected Monday through Friday in room 2835 between 8:00 a.m. and 4:00 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Electrification Administration, room 2844, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not: (1) Preempt any State or local laws, regulations, or policies; (2) Have any retroactive effect; and (3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most borrowers of REA loan funds do not meet the requirements for small entities. Further, the regulations are applied equally to all borrowers.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, information collection and recordkeeping requirements contained in this proposed rule have been approved by OMB under control number 0572–0077 which expires on January 31, 1994. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator of REA has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S. C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation that requires intergovernmental consultation with state and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, and RTB loans, to governmental and nongovernmental entities from coverage under this Order.

Background

REA issues publications titled "Bulletin" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure REA financing. REA issues standards and specifications for the construction of telephone facilities financed with REA Loan Funds. REA is proposing to rescind Bulletin 345–86, REA Specification for Filled Buried Service Wire, PE–86, and codifying this specification at 7 CFR 1755.860, REA Specification for Filled Buried Wires.

Filled buried service wire is used in outside plant by REA telephone borrowers as a physical transport medium for voice and data. The current specification limits to 2 pair and to 22 gauge the number of pairs and the size conductor of filled buried wire that can be supplied by wire manufacturers for installation by REA borrowers. Limitations are placed on the wire because of a decision by REA to restrict the application of this type wire exclusively to buried subscriber drops, and, thereby, force REA borrowers to install 6 pair cable for all small pair count distribution applications.

The use of 6 pair cables as distribution cables in sparsely populated exchanges has resulted in higher economic costs. The revised specification will allow the use of 24 AWG conductors and 3 pairs of conductors which will permit the revised wire designs to be used both as buried subscriber drops and small pair count distribution wires. This revision should eliminate the high cost associated with 6 pair cables.

The current specification does not include insulation and jacketing requirements, because these requirements were previously covered by REA Bulletins 345–21 and 345–51, both of which have since been rescinded. Therefore, revision of the current specification is necessary to incorporate essential jacketing and insulation requirements. By incorporating the requirements which were formerly found in REA Bulletins 345–21 and 345–51 into 7 CFR 1755.860, a comprehensive document will be published for the manufacture of filled buried wire products.

The current specification includes only end product requirements associated with filled buried service wire usage as a buried subscriber drop Since the revised specification will allow this type of wire to also be used as distribution wire, additional end product requirements have been included to assure a quality product for this application.

This action establishes REA requirements for a wider range of filled buried wires without affecting current designs or manufacturing techniques. This widened selection of wires will afford REA telephone borrowers the opportunity to increase subscriber services in an economical and efficient manner through enhanced wire designs brought about by technological advancements made during the past nine years.

List of Subjects in 7 CFR Part 1755

Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, REA proposes to amend 7 CFR part 1755 as follows:

Part 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION.

1. The authority citation for Part 1755 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq*

2. Section 1755.97 is amended by removing the entry REA Bulletin 345–86.

3. Section 1755.860 and Appendices A, B, and C to 1755.860 are added to read as follows:

§ 1755.860 REA specification for filled buried wires.

(a) *Scope.* (1) This specification covers the requirements for filled buried wires intended for direct burial as a subscriber drop and/or distribution wire.

(i) The conductors are solid copper, individually insulated with an extruded solid insulating compound.

(ii) The insulated conductors are twisted into pairs (a star-quad configuration is permitted for the two pair wires) which are then stranded or oscillated to form a cylindrical core.

(iii) A moisture resistant filling compound is applied to the stranded conductors completely covering the insulated conductors and filling the interstices between the pairs.

(iv) The wire structure is completed by the application of an optional core wrapping material, an inner jacket, a flooding compound, a shield, a flooding compound, and an overall plastic jacket.

(2) The number of pairs and gauge size of conductors which are used within the REA program are provided in the following table:

American Wire Gauge (AWG)	22	24
Pairs	2 3	2 3

(3) All wires sold to REA borrowers for projects involving REA loan funds under this section must be accepted by REA Technical Standards Committee "A" (Telephone). For wires manufactured to the specification of this section, all design changes to an accepted design must be submitted for acceptance. REA will be the sole authority on what constitutes a design change.

(4) Materials, manufacturing techniques, or wire designs not specifically addressed by this section may be allowed if accepted by REA. Justification for acceptance of modified materials, manufacturing techniques, or wire designs must be provided to substantiate product utility and long term stability and endurance.

(5) The American National Standard Institute/Electronic Industries Association (ANSI/EIA) 359-A-84, EIA Standard Colors for Color Identification and Coding, referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/EIA 359-A-84 are available for inspection during normal business hours at the Office of the **Federal Register**, 800 N. Capitol Street, NW., Suite 700, Washington, DC 20001. Copies are available from EIA, 2001 Pennsylvania Avenue, NW., Suite 900, Washington, DC 20006, telephone number (202) 457–4966.

(6) American Society for Testing and Materials Specifications (ASTM) A 505–87, General Requirements for Steel Sheet and Strip, Alloy, Hot-Rolled and Cold-Rolled; ASTM B 3–90 Specification for Soft or Annealed Copper Wire; ASTM B 193–87, Test Method for Resistivity of Electrical Conductor Materials; ASTM B 224–91, Classification of Coppers; ASTM B 694–86, Specification for Copper, Copper Alloy and Copper-Clad Stainless Steel Sheet and Strip for Electrical Cable Shielding; ASTM D 150–87, Test Methods for A-C Loss Characteristics and Permitivity (Dielectric Constant) of Solid Electrical Insulating Materials; ASTM D 257–78, Test Method for D-C Resistance or Conductance of Insulating Materials; ASTM D 1238–90, Test Method for Flow Rates of Thermoplastics by Extrusion Plastometer; ASTM D 1248–84(1989), Specification for Polyethylene Plastic Molding and Extrusion Materials; ASTM D 1535–89, Method for Specifying Color by the Munsell System; ASTM D 3349–86, Test Method for Absorption Coefficient of Carbon Black Pigmented Ethylene Plastic Film; ASTM D 4101–82(1988), Specification for Propylene Plastic Injection and Extrusion Materials; ASTM D 4565–90, Methods of Testing Physical and Environmental Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; ASTM D 4566–90, Methods of Testing Electrical Performance Properties of Insulation and Jacket for Telecommunications Wire and Cable; ASTM D 4568–86, Evaluating Compatibility Between Cable Filling and Flooding Compounds and Polyolefin Cable Materials; ASTM D 4872–88, Standard Test Method for Dielectric Testing of Wire and Cable Filling Compounds; ASTM E 8–91, Methods for Tension Testing of Metallic Materials; and ASTM E 29–90, Recommended Practice for Indicating Which Places of Figures Are to Be Considered Significant in Specified Limiting Values, referenced in this section are incorporated by reference by REA. These incorporations by references were approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ASTM standards are available for inspection during normal working hours at the Office of the **Federal Register**, 800 N. Capitol Street, N.W., Washington, DC 20001. Copies are available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187, telephone number (215) 299–5585.

(b) *Conductors and conductor insulation.* (1) Each conductor must be a solid round wire of commercially pure annealed copper. Conductors must meet the requirements of the American Society for Testing and Materials (ASTM) B 3–90 except that requirements for Dimensions and Permissible Variations are waived and elongation requirements are superseded by this section.

(2) The minimum conductor elongation in the final wire must comply with the following limits when tested in accordance with ASTM E 8–91.

Conductor—AWG	Minimum Elongation—Percent
22	20
24	16

(3) Joints made in conductors during the manufacturing process may be brazed, using a silver alloy solder and nonacid flux, or they may be welded using either an electrical or cold welding technique. In joints made in uninsulated conductors, the two conductor ends must be butted. Splices made in insulated conductors need not be butted but may be joined in a manner acceptable to REA.

(4) The tensile strength of any section of a conductor containing a factory joint must not be less than 85 percent of the tensile strength of an adjacent section of the solid conductor of equal length without a joint.

Engineering Information: The sizes of wire used and their nominal diameters shall be as shown in the following table:

AWG	Nominal Diameter	
	Millimeters (mm)	(Inches (in.))
22	0.643	(0.0253)
24	0.511	(0.0201)

(5) Each conductor must be insulated with either a colored, solid, insulating grade, high density polyethylene or crystalline propylene/ethylene copolymer or with a solid natural primary layer and a colored, solid outer skin using one of the insulating materials listed below.

(i) The polyethylene raw material selected to meet the requirements of this section must be Type III, Class A, Category 4 or 5, Grade E9, in accordance with ASTM D 1248–84(1989).

(ii) The crystalline propylene/ethylene raw material selected to meet the requirements of this section must be Class PP 200B 40003 E11 in accordance with ASTM D 4101–82(1988).

(iii) Raw materials intended as conductor insulation furnished to these requirements must be free from dirt, metallic particles, and other foreign matter.

(iv) All insulating raw materials must be accepted by REA prior to their use.

(6) All conductors in any single length of wire must be insulated with the same type of material.

(7) A permissible overall performance level of faults in conductor insulation must average not greater than one fault per 12,000 conductor meters (40,000 conductor feet) for each gauge of conductor.

(i) All insulated conductors must be continuously tested for insulation faults during the twinning operation with the method of test acceptable to REA. The length count and number of faults must be recorded. The information must be retained for a period of 6 months and be available for review by REA when requested.

(ii) The voltages for determining compliance with the requirements of this section are as follows:

AWG	Direct Current Voltages (Kilovolts)
22	6.0
24	5.0

(8) Repairs to the conductor insulation during manufacturing are permissible. The method of repair must be accepted by REA prior to its use. The repaired insulation must be capable of meeting the relevant electrical requirements of this section.

(9) All repaired sections of insulation must be retested in the same manner as originally tested for compliance with paragraph (b)(7) of this section.

(10) Colored insulating material removed from or tested on the conductor, from a finished wire, must be capable of meeting the following performance requirements:

Property	Poly-ethylene	Crystalline Propylene/ Ethylene Copolymer
Melt Flow Rate Percent increase from raw material, Maximum		
<0.5 (Initial Melt Index)	50	—
0.5–2.00 (Initial Melt Index)	25	—
≤5.0 (Initial Melt Index)	—	110
Tensile Strength—Minimum		
Megapascals (MPa)	16.5	21.0
(Pounds per Square Inch (psi))	(2,400)	(3,000)
Ultimate Elongation		
Minimum, Percent	300	300
Cold Bend		
Failures, Maximum	0/10	0/10
Shrinkback		
Maximum, mm (in.)	10 (0.375)	10 (0.375)
Oxygen Induction Time		
Minimum, Minutes	20	20

(11) *Testing procedures.* The procedures for testing the insulation samples for compliance with paragraph (b)(10) of this section must be as follows.

(i) *Melt flow rate.* The melt flow rate must be determined as described in ASTM D 1238–90. Condition E must be used for polyethylene. Condition L must be used for crystalline propylene/ethylene copolymer. The melt flow test must be conducted prior to the filling operation.

(ii) *Tensile strength and ultimate elongation.* Samples of the insulation material, removed from the conductor, must be tested in accordance with ASTM D 4565–90 using the following conditions. The minimum length of unclamped specimen must be 50 mm (2.0 in.). The minimum speed of jaw separation must be 25 mm (1.0 in.) per minute per 25 mm (1.0 in.) of unclamped specimen. The temperature of specimens and surrounding shall be 23 ± 1°C.

Note: Quality assurance testing at a jaw separation speed of 500 mm/min (20 in./min) is permissible. Failures at this rate must be retested at the 50 mm/min (2 in./min) rate to determine section compliance.

(iii) *Cold bend.* Samples of the insulation material on the conductor must be tested in accordance with ASTM D 4565–90 at a temperature of −40 ± 1°C with a mandrel diameter equal to 3 times the outside diameter of the insulated conductor. There must be no cracks visible to normal or corrected-to-normal vision.

(iv) *Shrinkback.* Samples of insulation must be tested for four hours in accordance with ASTM D 4565–90. The temperature for the type of material is listed below:

Material	Temperature
Polyethylene	115 ± 1°C
Crystalline Propylene/Ethylene Copolymer	130 ± 1°C

(v) *Oxygen induction time.* Samples of insulation, which have been conditioned in accordance with paragraph 17.3 of ASTM D 4565–90, must be tested in accordance with the procedures of ASTM D 4565–90 using copper pans and a test temperature of 199 ± 1°C.

(12) Other methods of testing may be used if acceptable to REA.

(c) *Identification of pairs and twisting of pairs.* (1) The insulation must be colored to identify:

(i) The tip and ring conductor of each pair; and

(ii) Each pair in the completed wire.

(2) The colors to be used to provide identification of the tip and ring conductor of each pair are shown in the following table:

Pair No.	Color	
	Tip	Ring
1	White	Blue
2	White	Orange
3	White	Green

(3) *Standards of color.* The colors of the insulated conductors supplied in accordance with this section are specified in terms of the Munsell Color System (ASTM D 1535–89) and must comply with the "Table of Wire and Cable Limit Chips" as defined in ANSI/EIA-359-A-84. (Visual color standards meeting these requirements may be obtained directly from the Munsell Color Company, Inc., 2441 North Calvert Street, Baltimore, Maryland 21218).

(4) Positive identification of the tip and ring conductors of each pair by marking each conductor of a pair with the color of its mate is permissible. The method of marking must be accepted by REA prior to its use.

(5) Other methods of providing positive identification of the tip and ring conductors of each pair may be employed if accepted by REA prior to its use.

(6) The insulated conductors must be twisted into pairs.

(7) In order to provide sufficiently high crosstalk isolation, the pair twists must be designed to enable the wire to meet the capacitance unbalance and the crosstalk loss requirements of paragraphs (m)(2), (m)(3), and (m)(4) of this section.

(8) The average length of pair twists in any pair in the finished wire, when measured on any 3 meter (m) (10 foot (ft)) length, must not exceed 152 mm (6 in.).

(9) An alternative method of forming the two pair wire is the use of a star-quad configuration.

(i) The assembly of the star-quad must be such as to enable the wire to meet the capacitance unbalance and the crosstalk loss requirements of paragraphs (m)(2), (m)(3), and (m)(4) of this section.

(ii) The four individual insulated conductors must be twisted together to form a star-quad configuration with the tip and ring conductors of each pair diagonally opposite each other in the quad.

(iii) The average length of twist for the star-quad in the finished wire, when measured on any 3 m (10 ft) length, must not exceed 152 mm (6 in.).

(iv) The following color scheme must be used to provide identification of the tip and ring conductor of each pair in the star-quad:

Pair No.	Color	
	Tip	Ring
1	White with blue stripe.	Blue
2	White with orange stripe.	Orange

(v) If desired, the blue and orange conductors may contain a white stripe. The stripes in this case must be narrow enough so that the tip and ring identification is obvious.

(d) *Forming of the wire core.* (1) Twisted pairs or star-quad configuration must be assembled in such a way as to form a substantially cylindrical group.

(2) The filling compound must be applied to the wire core in such a way as to provide a completely filled core as is commercially practical.

(3) If desired for manufacturing reasons, white or colored binders of nonhygroscopic and nonwicking material may be applied over the core.

(e) *Filling compound.* (1) After or during the stranding operation and prior to application of the optional core wrap and inner jacket, a homogeneous filling compound free of agglomerates must be applied to the wire core. The compound must be as nearly colorless as is commercially feasible and consistent with the end product requirements and pair identification.

(2) The filling compound must be free from dirt, metallic particles, and other foreign matter. It must be applied in such a way as to fill the space within the wire core.

(3) The filling compound must be nontoxic and present no dermal hazards.

(4) The filling compound must exhibit the following dielectric properties at a temperature of 23 ± 3°C when measured in accordance with ASTM D 150–87 or ASTM D 4872–88.

(i) The dissipation factor must not exceed 0.0015 at a frequency of 1 megahertz (MHz).

(ii) The dielectric constant must not exceed 2.30.

(5) The volume resistivity must not be less than 10^{12} ohm-cm at a temperature of 23 ± 3°C when measured in accordance with ASTM D 257–78 or ASTM D 4872–88.

(6) The individual wire manufacturer must satisfy REA that the filling compound selected for use is suitable for its intended application. The filling compound must be compatible with the wire components when tested in accordance with ASTM D 4568–86 at a temperature of 80°C.

(f) *Core wrap* (optional). (1) When a core wrap is used, it must consist of a layer of nonhygroscopic and nonwicking dielectric material. The wrap must be applied with an overlap.

(2) The core wrap must provide a sufficient heat barrier to prevent visible evidence of conductor insulation deformation or adhesion between conductors, caused by adverse heat transfer during the inner jacketing operation.

(3) If required for manufacturing reasons, white or colored binders of nonhygroscopic and nonwicking material may be applied over the core wrap.

(4) Sufficient filling compound must be applied to the core wrap that voids or air spaces existing between the core and inner side of the core wrap are minimized.

(g) *Inner jacket.* (1) An inner jacket must be applied over the core and/or core wrap.

(2) The jacket must be free from holes, splits, blisters, or other imperfections and must be as smooth and concentric as is consistent with the best commercial practice.

(3) The inner jacket material and test requirements must be as specified for the outer jacket material per paragraphs (j)(3) through (j)(5)(iv) of this section.

(4) The inner jacket thickness at any point must not be less than 0.5 mm (0.020 in.). The thickness must be determined from measurements on 50 mm (2 in.) samples taken not less than 0.3 m (1 ft) from either end of the wire. The average must be determined from 4 readings taken approximately 90° apart on any cross section of the samples. The maximum and minimum points must be determined by exploratory measurements. The maximum thickness minus the minimum thickness at any cross section must not exceed 43 percent of the average thickness at that cross section.

(h) *Flooding compound.* (1) Sufficient flooding compound must be applied on all sheath interfaces so that voids and air spaces in these areas are minimized.

(2) The flooding compound must be compatible with the jacket when tested in accordance with ASTM D 4568–86 at a temperature of 80°C. The floodant must exhibit adhesive properties sufficient to prevent jacket slip when tested in accordance with the requirements of Appendix A, paragraph (III)(5) of the section.

(3) The individual wire manufacturer must satisfy REA that the flooding compound selected for use is acceptable for the application.

(i) *Shield.* (1) A shield must be applied either longitudinally or helically over the inner jacket.

(i) If the shield is applied longitudinally, it must be corrugated.

(ii) If the shield is applied helically, it must be smooth.

(2) The overlap for longitudinally applied shields must be a minimum of 2 mm (0.075 in.) The overlap for helically applied shields must be a minimum of 23 percent of the tape width.

(3) General requirements for application of the shielding material are as follows:

(i) Successive lengths of shielding tapes may be joined during the manufacturing process by means of cold weld, electric weld, soldering with a nonacid flux, or other acceptable means;

(ii) Where two ends of a metal shield are to be joined together, care shall be taken to clean the metal surfaces in order to provide for a good mechanical and electrical connection;

(iii) The shields of each length of wire must be tested for continuity. A one meter (3 ft) section of shield containing a factory joint must exhibit not more than 110 percent of the resistance of a shield of equal length without a joint;

(iv) The breaking strength of any section of a shield tape containing a factory joint must not be less than 80 percent of the breaking strength of an adjacent section of the shield of equal length without a joint;

(v) The reduction in thickness of the shielding material due to the corrugating or application process must be kept to a minimum and must not exceed 10 percent at any spot; and

(vi) The shielding material must be applied in such a manner as to enable the wire to pass the bend test as specified in paragraph (n)(3) of this section.

(4) The following materials are acceptable for use as wire shielding.

Standard Wire	Gopher Resistant Wire
....	Copper-Clad Stainless Steel 0.1270 ± 0.0127 mm (0.0050 ± 0.0005 in.)
Copper Alloy 220 (Bronze). 0.1270 ± 0.0127 mm ...... (0.0050 ± 0.0005 in.)	Copper Alloy 664 0.1397 ± 0.00508 mm (0.0055 ± 0.0002 in.)
....	Copper-Clad Alloy Steel 0.1270 ± 0.0127 mm (0.0050 ± 0.0005 in.)

(i) The copper-clad steels and copper alloy 664 shielding tapes must be capable of meeting the following performance requirements prior to application to the wire.

Property	Requirement
Tensile Strength Minimum, MPa (psi)	379 (55,000)

Property	Requirement
Tensile Yield Minimum, MPa (psi)	241 (35,000)
Elongation Minimum, percent in 50 mm (2 in.)	15

(ii) *Copper alloy 220.* The shielding material, prior to application to the wire, must be in the fully annealed condition and must conform to the requirements of ASTM B 694–86 for C22000 commercial bronze.

(iii) *Copper-clad stainless steel.* In addition to meeting the requirements of (4)(i) of this section, the shielding material, prior to application to the wire, must be in the fully annealed condition and must conform to the requirements of ASTM B 694–86, with a cladding ratio of 16/68/16 and must have a minimum electrical conductivity of 28 percent IACS when measured in accordance with ASTM B 193–87.

(iv) *Copper alloy 664.* In addition to meeting the requirements of (4)(i) of this section, the shielding material, prior to application to the wire, must be annealed temper and must conform to the requirements of ASTM B 694–86 and must have a minimum electrical conductivity of 28 percent IACS when measured in accordance with ASTM B 193–87.

(v) *Copper-clad alloy steel.* In addition to meeting the requirements of (4)(i) of this section, the shielding material, prior to application to the wire, must be in the fully annealed condition and the copper component must conform to the requirements of ASTM B 224–91 and the alloy steel component must conform to the requirements of ASTM A 505–87, with a cladding ratio of 16/68/16, and must have a minimum electrical conductivity of 28 percent IACS when measured in accordance with ASTM B 193–87.

(j) *Outer jacket.* (1) The outer jacket must provide the wire with a tough, flexible, protective covering which can withstand exposure to sunlight, to atmospheric temperatures and stresses reasonably expected in normal installation and service.

(2) The jacket must be free from holes, splits, blisters, or other imperfections and must be as smooth and concentric as is consistent with the best commercial practice.

(3) The raw material used for the outer jacket must be one of the five types listed in paragraphs (j)(3)(i) through (j)(3)(v) of this section. The raw material must contain an antioxidant to provide long term stabilization and the materials must contain a 2.60 ± 0.25 percent concentration of furnace black to provide ultraviolet shielding. Both the antioxidant and furnace black must be compounded into the material by the raw material supplier.

(i) Low density, high molecular weight polyethylene (LDHMW) must conform to the requirements of ASTM D 1248–84(1989), Type I, Class C, Category 4 or 5, Grade J3.

(ii) Low density, high molecular weight ethylene copolymer (LDHMW) must conform to the requirements of ASTM D 1248–84 (1989), Type I, Class C, Category 4 or 5, Grade J3.

(iii) Linear low density, high molecular weight polyethylene (LLDHMW) must conform to the requirements of ASTM D 1248–84(1989), Type I, Class C, Category 4 or 5, Grade J3.

(iv) High density polyethylene (HD) must conform to the requirements of ASTM D 1248–84(1989), Type III, Class C, Category 4 or 5, Grade J4.

(v) Medium density polyethylene (MD) must conform to the requirements of ASTM D 1248–84(1989), Type II, Class C, Category 4 or 5, Grade J4.

(vi) Particle size of the carbon selected for use must not average greater than 20 nanometers.

(vii) Absorption coefficient must be a minimum of 400 in accordance with the procedures of ASTM D 3349–86.

(4) The outer jacketing material removed from or tested on the wire must be capable of meeting the following performance requirements:

Property	LLDHMW, Ethylene Copolymer	LDHMW Polyethylene	HD or MD Polyethylene
Melt Flow Rate Percent increase from raw material Maximum		50	50
<0.41 (Initial Melt Index)	100	—	—
0.41–2.00 (Initial Melt Index)	50	—	—
Tensile Strength Minimum, MPa (psi)	12.0 (1,700)	12.0 (1,700)	16.5 (2,400)
Ultimate Elongation Percent, Minimum	400	400	300
Shrinkback Percent of Length, Maximum	5	5	5
Impact Failures, Maximum	2/10	2/10	2/10

(5) *Testing procedures.* The procedures for testing the jacket samples for compliance with (4) of this section must be as follows.

(i) *Melt flow rate.* The melt flow rate must be as determined by ASTM D 1238–90, Condition E. Jacketing material must be free from flooding and filling compound.

(ii) *Tensile strength and ultimate elongation.* Test in accordance with ASTM D 4565–90, using a jaw separation speed of 500 mm/min (20 in./min) for low density material and 50 mm/min (2 in./min) for high and medium density materials.

(iii) *Shrinkback.* Test in accordance with the procedures specified in ASTM D 4565–90 using a test temperature of 100 ± 1°C for low density material and a test temperature of 115 ± 1°C for high and medium density materials.

(iv) *Impact.* The test must be performed in accordance with ASTM D 4565–90 using an impact force of 4 newton-meter (3 pound force-foot) at a temperature of −20 ± 2°C. The cylinder must strike the sample at the shield overlap. A crack or split in the jacket constitutes failure.

(6) *Jacket thickness.* The minimum jacket thickness must be 0.64 mm (0.025 in.) except that the minimum thickness over the sheath slitting cord, if present, must be 0.46 mm (0.018 in.). The minimum point must be determined by exploratory measurements. The average thickness at any cross section must be determined from four readings including the minimum point, taken approximately 90° apart. The thickness measurement must exclude any jacket material that has formed into the corrugation. The maximum thickness at any cross section must not be greater than 155 percent of the minimum thickness.

(7) *Eccentricity.* The eccentricity of the jacket must not exceed 43 percent when calculated using the formula below:

$$\frac{\text{Maximum Thickness} - \text{Minimum Thickness}}{\text{Average Thickness}} \times 100 \text{ Percent}$$

(k) *Sheath slitting cord* (optional). (1) Sheath slitting cords may be used in the wire structure at the option of the manufacturer.

(2) When a sheath slitting cord is used it must be nonhygroscopic and nonwicking, continuous throughout a length of wire, and of sufficient strength to open the sheath without breaking the cord.

(3) Sheath slitting cords must be capable of consistently slitting the jacket(s) and/or shield for a continuous length of 0.6 m (2 ft) when tested in accordance with the procedure specified in Appendix B of this section.

(l) *Identification marker and length marker.* (1) Each length of wire must be permanently identified as to manufacturer and year of manufacture.

(2) The number of conductor pairs and their gauge size must be marked on the jacket.

(3) The marking must be printed on the jacket at regular intervals of not more than 1.5 m (5 ft).

(4) An alternative method of marking may be used if accepted by REA prior to its use.

(5) The completed wire must have sequentially numbered length markers in FEET OR METERS at regular intervals of not more than 1.5 m (5 ft) along the outside of the jacket.

(6) The method of length marking must be such that for any single length of wire, continuous sequential numbering must be employed.

(7) The numbers must be dimensioned and spaced to produce good legibility and must be approximately 3 mm (0.125 in.) in height. An occasional illegible marking is permissible if there is a legible marking located not more than 1.5 m (5 ft) from it.

(8) The method of marking must be by means of suitable surface markings producing a clear, distinguishable, contrasting marking acceptable to REA. Where direct or transverse printing is employed, the characters should be indented to produce greater durability of marking. Any other method of length marking must be acceptable to REA as producing a marker suitable for the field. Size, shape and spacing of numbers, durability, and overall legibility of the marker will be considered in acceptance of the method.

(9) The accuracy of the length marking must be such that the actual length of any wire section is never less than the length indicated by the marking and never more than one percent greater than the length indicated by the marking.

(10) The color of the initial marking must be white or silver. If the initial marking fails to meet the requirements of the preceding paragraphs, it will be permissible to either remove the defective marking and re-mark with the white or silver color or leave the defective marking on the wire and re-mark with yellow. No further re-marking is permitted. Any re-marking must be on a different portion of the wire circumference than any existing marking when possible and have a numbering sequence differing from any other existing marking by at least 5,000.

(11) Any reel of wire which contains more than one set of sequential markings must be labeled to indicate the color and sequence of marking to be used. The labeling must be applied to the reel and also to the wire.

(m) *Electrical requirements.* (1) *Mutual capacitance and conductance.* (i) The average mutual capacitance (corrected for length) of all pairs in any reel must not exceed 52 ± 4 nanofarad/kilometer (nF/km) (83 ± 7 nanofarad/mile (nF/mile)) when tested in accordance with ASTM D 4566–90 at a frequency of 1.0 ± 0.1 kilohertz (kHz) and a temperature of 23 ± 3°C.

(ii) The mutual conductance (corrected for length and gauge) of any pair must not exceed 2 micromhos/kilometer (micromhos/km) (3.3 micromhos/mile) when tested in accordance with ASTM D 4566–90 at a frequency of 1.0 ± 0.1 kHz and a temperature of 23 ± 3°C.

(2) *Pair-to-pair capacitance unbalance.* The capacitance unbalance between any pair of the completed wire must not exceed 145 picofarad/kilometer (pF/km) (80 picofarad/1000 ft (pF/1000 ft)) when tested in accordance with ASTM D 4566–90 at a frequency of 1.0 ± 0.1 kHz and a temperature of 23 ± 3°C.

(3) *Pair-to-ground capacitance unbalance.* (i) *Pair-to-ground.* The capacitance unbalance as measured on the individual pairs of the completed wire must not exceed 2625 pF/km (800 pF/1000 ft) when tested in accordance with ASTM D 4566–90 at a frequency of 1.0 ± 0.1 kHz and a temperature of 23 ± 3°C.

(ii) When measuring pair-to-ground capacitance unbalance, all pairs, except the pair under test, are grounded to the shield.

(iii) Pair-to-ground capacitance unbalance may vary directly with the length of the wire.

(4) *Far-end crosstalk loss.* The output-to-output far-end crosstalk loss (FEXT) between any pair combination of a completed wire when measured in accordance with ASTM D 4566–90 at a test frequency of 150 kHz must not be less than 58 decibel/kilometer (dB/km) (63 decibel/1000 ft). If the loss K_o at a frequency F_o for length L_o is known, then K_x can be determined for any other frequency F_x or length L_x by:

FEXT loss (K_x) =

$$K_o - 20 \log 10 \frac{F_x}{F_o} - 10 \log 10 \frac{L_x}{L_o}$$

(5) *Attenuation.* The attenuation of any individual pair on any reel of wire must not exceed the following limits when measured at or corrected to a temperature of 20 ± 1°C and a test frequency of 150 kHz. The test must be conducted in accordance with ASTM D 4566–90.

Conductor AWG	Individual Pair Attenuation dB/km (decibel/mile (dB/mile))	
	Maximum	Minimum
22	6.8 (11.0)	5.0 (8.1)
24	8.7 (14.0)	6.6 (10.7)

(6) *Insulation resistance.* Each insulated conductor in each length of completed wire, when measured with all other insulated conductors and the shield grounded, must have an insulation resistance of not less than 1600 megohm-kilometer (1000 megohm-mile) at 20 ± 1°C. The measurement must be made in accordance with the procedures of ASTM D 4566–90.

(7) *High voltage test.* (i) In each length of completed wire, the insulation between conductors when tested in accordance with ASTM D 4566–90 must withstand for 3 seconds a direct current (dc) potential whose value is not less than:

(A) 5.0 kilovolts for 22-gauge conductors; and

(B) 4.0 kilovolts for 24-gauge conductors.

(ii) In each length of completed wire, the dielectric strength between the shield and all conductors in the core must be tested in accordance with ASTM D 4566–90 and must withstand, for 3 seconds, a dc potential whose value is not less than 20 kilovolts.

(8) *Conductor resistance.* The dc resistance of any conductor must be measured in the completed wire in accordance with ASTM D 4566–90 and must not exceed the following values when measured at or corrected to a temperature of 20 ± 1°C.

AWG	Maximum Resistance	
	ohms/kilometer	(ohms/1000 ft)
22	57.1	(17.4)
24	90.2	(27.5)

(9) *Resistance unbalance.* (i) The difference in dc resistance between the two conductors of any pair in the completed wire must not exceed 5.0 percent when measured in accordance with the procedures of ASTM D 4566–90.

(ii) The resistance unbalance between tip and ring conductors shall be random with respect to the direction of unbalance. That is, the resistance of the tip conductors shall not be consistently higher with respect to the ring conductors and vice versa.

(n) *Mechanical requirements.* (1) *Defective wire.* Pairs in each length of wire will not be permitted to have either a ground, cross, short or open circuit condition.

(2) *Wire breaking strength.* The breaking strength of the completed wire must not be less than 890 newtons (200 pound-force) when tested in accordance with ASTM D 4565–90 using a jaw separation speed of 25 mm/min (1.0 in./min).

(3) *Wire bending test.* The completed wire must be capable of meeting the requirements of ASTM D 4565–90 after conditioning at −20 ± 2°C and at 23 ± 2°C.

(4) *Water penetration test.* (i) A one meter (3 ft) length of completed wire must be stabilized at 23 ± 2°C and tested in accordance with ASTM D 4565–90 using a one meter (3 ft) water head over the sample or placed under the equivalent continuous pressure for one hour.

(ii) After the one hour period, there must be no water leakage in the sheath interfaces, under the core wrap or between any insulated conductors in the core.

(iii) If water leakage is detected in the first sample, one 3 m (10 ft) additional adjacent sample from the same reel of wire must be tested in accordance with paragraph (n)(4)(i) of this section. If the second sample exhibits water leakage, the entire reel of wire is to be rejected. If the second sample exhibits no leakage, the entire reel of wire is considered acceptable.

(5) *Compound flow test.* The completed wire must be capable of meeting the compound flow test specified in ASTM D 4565–90 when exposed for a period of 24 hours at a temperature of 80 ± 1°C. At the end of this test period, there must be no evidence of flowing or dripping of compound from either the core or sheath interfaces.

(o) *Acceptance testing and extent of testing.* (1) The tests described in Appendix A of this section are intended for acceptance of wire designs and major modifications of accepted designs. REA decides what constitutes a major modification. These tests are intended to show the inherent capability of the manufacturer to produce wire products having long life and stability.

(2) For initial acceptance, the manufacturer must submit:

(i) An original signature certification that the product fully complies with each section of the specification;

(ii) Qualification Test Data, per Appendix A of this section;

(iii) To periodic plant inspections;

(iv) A certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (52 Stat. 818);

(v) Written user testimonials concerning performance of the product; and

(vi) Other nonproprietary data deemed necessary by the Chief, Outside Plant Branch (Telephone).

(3) For requalification acceptance, the manufacturer must submit an original signature certification that the product fully complies with each section of the specification, excluding the Qualification Section, and a certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (52 Stat. 818) for acceptance by June 30 every three years. The required data and certification must have been gathered within 90 days of the submission.

(4) Initial and requalification acceptance requests should be addressed to:

Chairman, Technical Standards
Committee "A" (Telephone)
Telecommunications Standards
Division
Rural Electrification Administration
Washington, DC 20250–1500

(5) *Tests on 100 percent of completed wire.* (i) The shield of each length of wire must be tested for continuity using the procedures of ASTM D 4566–90.

(ii) Dielectric strength between all conductors and the shield must be tested to determine freedom from grounds in accordance with paragraph (m)(7)(ii) of this section.

(iii) Each conductor in the completed wire must be tested for continuity using the procedures of ASTM D 4566–90.

(iv) Dielectric strength between conductors must be tested to ensure freedom from shorts and crosses in accordance with paragraph (m)(7)(i) of this section.

(v) The average mutual capacitance must be measured on all wires.

(6) *Capability tests.* Tests on a quality assurance basis must be made as frequently as is required for each manufacturer to determine and maintain compliance with:

(i) Performance requirements for conductor insulation and jacket material;

(ii) Performance requirements for filling and flooding compounds;

(iii) Sequential marking and lettering;

(iv) Capacitance unbalance and crosstalk;

(v) Insulation resistance;

(vi) Conductor resistance and resistance unbalance;

(vii) Wire bending and wire breaking strength tests;

(viii) Mutual conductance and attenuation; and

(ix) Water penetration and compound flow tests.

(p) *Summary of records of electrical and physical tests.* (1) Each manufacturer must maintain suitable summary of records for a period of at least 3 years for all electrical and physical tests required on completed wire by this section as set forth in paragraphs (o)(5) and (o)(6) of this section. The test data for a particular reel shall be in a form that it may be readily available to the purchaser or to REA upon request.

(2) Measurements and computed values must be rounded off to the number of places of figures specified for the requirement according to ASTM E 29–90.

(q) *Manufacturing irregularities.* (1) Repairs to the inner jacket and shield are not permitted in wire supplied to the end user under this section.

(2) Minor defects in the outer jackets (defects having a dimension of 3 mm (0.125 in.) or less in any direction) may be repaired by means of heat fusing in accordance with good commercial practices utilizing sheath grade compound.

(r) *Preparation for shipment.* (1) The wire must be shipped on reels. The diameter of the drum must be large enough to prevent damage to the wire from reeling or unreeling. The reels must be substantial and so constructed as to prevent damage to the wire during shipment and handling.

(2) The thermal wrap must comply with the requirements of Appendix C of this section. When a thermal reel wrap is supplied, the wrap must be applied to the reel and must be suitably secured in place to minimize thermal exposure to the wire during storage and shipment. The use of the thermal reel wrap as a means of reel protection will be at the option of the manufacturer unless specified by the end user.

(3) The outer end of the wire must be securely fastened to the reel head so as to prevent the wire from becoming loose in transit. The inner end of the wire must be securely fastened in such a way as to make it readily available if required for electrical testing. Spikes, staples, or other fastening devices which

penetrate the wire jacket must not be used. The method of fastening the wire ends must be accepted by REA prior to it being used.

(4) Each length of wire must be wound on a separate reel unless otherwise specified or agreed to by the purchaser.

(5) Each reel must be plainly marked to indicate the direction in which it should be rolled to prevent loosening of the wire on the reel.

(6) Each reel must be stenciled or labeled on either one or both sides with the name of the manufacturer, year of manufacture, actual shipping length, an inner and outer end sequential length marking, description of the wire, reel number and the REA wire designation:

WIRE DESIGNATION
BFW
Wire Construction
Pair Count
Conductor Gauge
N = Copper Alloy 220 (Bronze) Shield
Y = Gopher Resistant Shields

Example: BFWY 3–24
Buried Filled Wire, Gopher Resistant Shield, 3 pair, 24 AWG

(7) Both ends of the filled buried wire, manufactured to the requirements of this section, must be equipped with end caps which are acceptable to REA.

(The information and recordkeeping requirements of this section have been approved by the Office of Management and Budget (OMB) under the Control Number 0572–0077.)

Appendix A to 1755.860—Qualification Test Methods

(I) The test procedures described in this appendix are for qualification of initial designs and major modifications of accepted designs. Included at the end of this document are suggested formats that may be used in submitting test results to REA.

(II) *Sample Selection and Preparation.* (1) All testing must be performed on lengths removed sequentially from the same 3 pair, 22 gauge jacketed wire. This wire must not have been exposed to temperatures in excess of 38°C since its initial cool down after sheathing. The lengths specified are minimum lengths and if desirable from a laboratory testing standpoint longer lengths may be used.

(a) Length A shall be 10 ± 0.2 meters (33 ± 0.5 feet) long and must be maintained at 23 ± 3°C. One length is required.

(b) Length B shall be 12 ± 0.2 meters (40 ± 0.5 feet) long. Prepare the test sample by removing the inner and outer jacket, shield, and core wrap, if present, for a sufficient distance on both ends to allow the insulated conductors to be flared out. Remove sufficient conductor insulation so that appropriate electrical test connections can be made at both ends. Coil the specimen with a diameter of 15 to 20 times its sheath diameter. Three lengths are required.

(c) Length C shall be one meter (3 feet) long. Four lengths are required.

(d) Length D shall be 300 millimeters (1 foot) long. Four lengths are required.

(e) Length E shall be 600 millimeters (2 feet) long. Four lengths are required.

(f) Length F shall be 3 meters (10 feet) long and must be maintained at 23 ± 3°C for the duration of the test. Two lengths are required.

(2) *Data Reference Temperature.* Unless otherwise specified, all measurements shall be made at 23 ± 3°C.

(III) *Environmental Tests.* (1) *Heat Aging Test.* (a) *Test Samples.* Place one sample each of lengths B, C, D, and E in an oven or environmental chamber. The ends of sample B must exit from the chamber or oven for electrical tests. Securely seal the oven exit holes.

(b) *Sequence of Tests.* After conditioning the samples are to be subjected to the following tests:

(i) Water Immersion Test outlined in (III)(2) of this appendix;

(ii) Water Penetration Test outlined in (III)(3) of this appendix;

(iii) Insulation Compression Test outlined in (III)(4) of this appendix; and

(iv) Jacket Slip Strength Test outlined in (III)(5) of this appendix.

(c) *Initial Measurements.* (i) For sample B, measure the open circuit capacitance and conductance for each pair at 1 and 150 kilohertz and the attenuation at 150 kilohertz after conditioning the sample at the data reference temperature for 24 hours. Calculate the average and standard deviation for the data of the 3 pairs on a per kilometer (per mile) basis.

(ii) The attenuation at 150 kilohertz may be calculated from open circuit admittance (Yoc) and short circuit impedance (Zsc) or may be obtained by direct measurement of attenuation.

(iii) Record on suggested formats attached or on other easily readable formats.

(d) *Heat Conditioning.* (i) Immediately after completing the initial measurements, condition the sample for 14 days at a temperature of 65 ± 2°C.

(ii) At the end of this period note any exudation of filling compound. Measure and calculate the parameters given in (III)(1)(c) of this appendix. Record on suggested formats attached or on other easily readable formats.

(iii) Cut away and discard a one meter (3 foot) section from each end of length B.

(e) *Overall Electrical Deviation.* (i) Calculate the percent change in all average parameters between the final parameters after conditioning with the initial parameters in (III)(1)(c) of this appendix.

(ii) The stability of the electrical parameters after completion of this test must be within the following prescribed limits:

(A) *Capacitance.* The average mutual capacitance must be within 5 percent of its original value;

(B) The change in average mutual capacitance must be less than 5 percent over the frequency range of 1 to 150 kilohertz;

(C) *Conductance.* The average mutual conductance must not exceed 2 micromhos/kilometer (3.3 micromhos/mile) at a frequency of 1 kilohertz; and

(D) *Attenuation.* The attenuation must not have increased by more than 5 percent over its original value.

(2) *Water Immersion Electrical Test.* (a) *Test Sample Selection.* The 10 meter (33 foot) section of length B must be tested.

(b) *Test Sample Preparation.* Prepare the sample by removing the inner and outer jacket, shield, and core wrap, if present, for a sufficient distance to allow one end to be accessed for test connections. Cut out a series of 2.5 millimeter by 13 millimeter (0.1 inch by 0.5 inch) rectangular slots along the test sample, at 300 millimeter (1 foot) intervals progressing successively 90 degrees around the circumference of the wire. Assure that the wire core is exposed at each slot by slitting the inner jacket and core wrap if present. Place the prepared sample in a dry vessel which when filled will maintain a one meter (3 foot) head of water over 6 meters (20 feet) of uncoiled wire. Extend and fasten the ends of the wire so they will be above the water line and the pairs are rigidly held for the duration of the test.

(c) *Capacitance and Conductance Testing.* Measure the initial values of mutual capacitance and conductance of all pairs in each wire at a frequency of 1 kilohertz before filling the vessel with water. Be sure the wire shield is grounded to the test equipment. Fill the vessel until there is a one meter (3 foot) head of water on the wires.

(i) Remeasure the mutual capacitance and conductance after the wires have been submerged for 24 hours and again after 30 days.

(ii) Record each sample separately on the suggested formats attached or on other easily readable formats.

(d) *Overall Electrical Deviation.* (i) Calculate the percent change in all average parameters between the final parameters after conditioning with the initial parameters in (III)(2)(c) of this appendix.

(ii) The stability of the electrical parameters after of the test must be within the following prescribed limits:

(A) *Capacitance.* The average mutual capacitance must be within 5 percent of its original value; and

(B) *Conductance.* The average mutual conductance must not exceed 2 micromhos/kilometer (3.3 micromhos/mile) at a frequency of 1 kilohertz.

(3) *Water Penetration Testing.* (a) A watertight closure must be placed over the jacket of length C. The closure must not be placed over the jacket so tightly that the flow of water through preexisting voids or air spaces is restricted. The other end of the sample must remain open.

(b) Test per Option A or Option B. (i) *Option A.* Weigh the sample and closure prior to testing. Fill the closure with water and place under a continuous pressure of 10 ± 0.7 kilopascals (1.5 ± 0.1 pounds per square inch gauge) for one hour. Collect the water leakage from the end of the test sample during the test and weigh to the nearest 0.1 gram. Immediately after the one hour test, seal the ends of the wire with a thin layer of grease and remove all visible water from the closure, being careful not to remove water that penetrated into the core during the test. Reweigh the sample and determine the weight of water that penetrated into the core. The weight of water that penetrated into the core must not exceed 1 gram.

(ii) *Option B.* Fill the closure with a 0.2 gram sodium fluorscein per liter water solution and apply a continuous pressure of 10 ± 0.7 kilopascals (1.5 ± 0.1 pounds per square inch gauge) for one hour. Catch and weigh any water that leaks from the end of the wire during the one hour period. If no water leaks from the sample, carefully remove the water from the closure. Then carefully remove the outer jacket, shield, inner jacket and core wrap, if present, one at a time, examining with an ultraviolet light source for water penetration. After removal of the inner jacket and core wrap, if present, carefully dissect the core and examine for water penetration within the core. Where water penetration is observed, measure the penetration distance. The distance of water penetration into the core must not exceed 127 millimeters (5.0 inches).

(4) *Insulation Compression Test.* (a) *Test Sample D.* Remove inner and outer jacket, shield, and core wrap, if present, being careful not to damage the conductor insulation. Remove one pair from the core and carefully separate, wipe off core filler and straighten the insulated conductors. Retwist the two insulated conductors together under sufficient tension to form 10 evenly spaced 360 degree twists in a length of 100 millimeters (4 inches).

(b) *Sample Testing.* Center the mid 50 millimeters (2 inches) of the twisted pair between two smooth rigid parallel metal plates measuring 50 millimeters (2 inches) in length or diameter. Apply a 1.5 volt direct current potential between the conductors, using a light or buzzer to indicate electrical contact between the conductors. Apply a constant load of 67 newtons (15 pound-force) on the sample for one minute and monitor for evidence of contact between the conductors. Record results on suggested formats attached or on other easily readable formats.

(5) *Jacket Slip Strength Test.* (a) *Sample Selection.* Test sample E from (III)(1)(a) of this appendix.

(b) *Sample Preparation.* Prepare test sample in accordance with the procedures specified in ASTM D 4565–90.

(c) *Sample Conditioning and Testing.* Remove the sample from the tensile tester prior to testing and condition for one hour at 50 ± 2°C. Test immediately in accordance with the procedure specified in ASTM D 4565–90. A minimum outer jacket slip strength of 67 newtons (15 pound-force) is required. Record the load attained.

(6) *Humidity Exposure.* (a) Repeat steps (III)(1)(a) through (III)(1)(c)(iii) of this appendix for separate set of samples B, C, D and E which have not been subjected to prior environmental conditioning.

(b) Immediately after completing the measurements, expose the test sample to 100 temperature cyclings. Relative humidity within the chamber must be maintained at 90 ± 2 percent. One cycle consists of beginning at a stabilized chamber and test sample temperature of 52 ± 1°C, increasing the temperature to 57 ± 1°C, allowing the chamber and test samples to stabilize at this level, then dropping the temperature back to 52 ± 1°C.

(c) Repeat steps (III)(1)(d)(ii) through (III)(5)(c) of this appendix.

(7) *Temperature Cycling.* (a) Repeat steps (III)(1)(a) through (III)(1)(c)(iii) of this appendix for separate set of samples B, C, D and E which have not been subjected to prior environmental conditioning.

(b) Immediately after completing the measurements, subject the test sample to 10 cycles of temperature between −40°C and +60°C. The test sample must be held at each temperature extreme for a minimum of 1 1/2 hours during each cycle of temperature. The air within the temperature cycling chamber must be circulated throughout the duration of the cycling.

(c) Repeat steps (III)(1)(d)(ii) through (III)(5)(c) of this appendix.

(IV) *Control Sample.* (1) *Test Samples.* A separate set of lengths for samples A, C, D, and E must have been maintained at 23 ± 3°C for at least 48 hours before the testing.

(2) Repeat steps (III)(2) through (III)(5)(c) of this appendix except use length A instead of length B.

(3) *Surge Test.* (a) One length of sample F must be used to measure the breakdown between conductors while the other length of F must be used to measure core to shield breakdown.

(b) The samples must be capable of withstanding, without damage, a single surge voltage of 20 kilovolts peak between conductors, and 35 kilovolts peak between conductors and the shield as hereinafter described. The surge voltage must be developed from a capacitor discharge through a forming resistor connected in parallel with the dielectric of the test sample. The surge generator constants must be such as to produce a surge of 1.5 x 40 microseconds wave shape.

(c) The shape of the generated wave must be determined at a reduced voltage by connecting an oscilloscope across the forming resistor with the wire sample connected in parallel with the forming resistor. The capacitor bank is charged to the test voltage and then discharged through the forming resistor and test sample. The test sample will be considered to have passed the test if there is no distinct change in the wave shape obtained with the initial reduced voltage compared to that obtained after the application of the test voltage.

ENVIRONMENTAL CONDITIONING ______

FREQUENCY 1 KILOHERTZ

PAIR NUMBER	CAPACITANCE		CONDUCTANCE	
	nF/km	(nF/mile)	micromhos/km	(micromhos/mile)
	Initial	Final	Initial	Final
1				
2				
3				
Average $\bar{x}$				

Overall Percent Difference in Average $\bar{x}$ Capacitance: ______ Conductance: ______

ENVIRONMENTAL CONDITIONING ______

FREQUENCY 150 KILOHERTZ

PAIR NUMBER	CAPACITANCE		CONDUCTANCE		ATTENUATION	
	nF/km	(nF/mile)	micromhos/km	(micromhos/mile)	dB/km	(dB/mile)
	Initial	Final	Initial	Final	Initial	Final
1						
2						
3						
Average $\bar{x}$						

Overall Percent Difference in Average $\bar{x}$ Capacitance: ______ Conductance: ______ Attenuation: ______

ENVIRONMENTAL CONDITIONING ______

WATER IMMERSION TEST (1 KILOHERTZ)

PAIR NUMBER	CAPACITANCE			CONDUCTANCE		
	nF/km	(nF/mile)		micromhos/km	(micromhos/mile)	
	Initial	24 hours	Final	Initial	24 hours	Final
1						
2						
3						
Average $\bar{x}$						

Overall Percent Difference in Average $\bar{x}$ Capacitance: ______ Conductance: ______

WATER PENETRATION TEST

	Option A		Option B	
	End Leakage grams	Weight Gain grams	End Leakage grams	Penetration mm (in.)
Control				
Heat Age				
Humidity Exposure				
Temperature Cycling				

INSULATION COMPRESSION

	Failures
Control	
Heat Age	
Humidity Exposure	
Temperature Cycling	

JACKET SLIP STRENGTH @ 50°C

	Load in newtons (pound-force)
Control	
Heat Age	
Humidity Exposure	
Temperature Cycling	

FILLER EXUDATION (GRAMS)

Heat Age	
Humidity Exposure	
Temperature Cycle	

SURGE TEST (KILOVOLTS)

Conductor to Conductor	
Shield to Conductors	

Appendix B to 1755.860—Sheath Slitting Cord Qualification

(I) The test procedures described in this appendix are for qualification of initial and subsequent changes in sheath slitting cords.

(II) *Sample Selection.* All testing must be performed on two 1.2 meters (4 feet) lengths of wire removed sequentially from the same 3 pair, 22 gauge jacketed wire. This wire must not have been exposed to temperatures in excess of 38°C since its initial cool down after sheathing.

(III) *Test Procedure.* (1) Using a suitable tool, expose enough of sheath slitting cord to permit grasping with needle nose pliers.

(2) The prepared test specimens must be maintained at a temperature of 23 ± 1°C for at least 4 hours immediately prior to and during the test.

(3) Wrap the sheath slitting cord around the plier jaws to ensure a good grip.

(4) Grasp and hold the wire in a convenient position while gently and firmly pulling the sheath slitting cord longitudinally in the direction away from the wire end. The angle of pull may vary to any convenient and functional degree. A small starting notch is permissible.

(5) The sheath slitting cord is considered acceptable if the cord can slit the jacket and/or shield for a continuous length of 0.6 meter (2 feet) without breaking the cord.

Appendix C to 1755.860—Thermal Reel Wrap Qualification

(I) The test procedures described in this appendix are for qualification of initial and subsequent changes in thermal reel wraps.

(II) *Sample Selection.* All testing must be performed on two 450 millimeter (18 inch) lengths of wire removed sequentially from the same 3 pair, 22 gauge jacketed wire. This wire must not have been exposed to temperatures in excess of 38°C since its initial cool down after sheathing.

(III) *Test Procedure.* (1) Place the two samples on an insulating material such as wood, etc.

(2) Tape thermocouples to the jackets of each sample to measure the jacket temperature.

(3) Cover one sample with the thermal reel wrap.

(4) Expose the samples to a radiant heat source capable of heating the uncovered jacket sample to a minimum of 71°C. A 600 watt photoflood lamp or an equivalent lamp having the light spectrum approximately that of the sun shall be used.

(5) The height of the lamp above the jacket shall be 380 millimeters (15 inches) or a height that produces the 71°C jacket temperature on the unwrapped sample.

(6) After the samples have stabilized at the temperature, the jacket temperatures of the samples must be recorded after one hour of exposure to the heat source.

(7) Compute the temperature difference between the jackets.

(8) For the thermal reel wrap to be acceptable to REA, the temperature differences between the jacket with the thermal reel wrap and the jacket without the reel wrap must be greater than or equal to 17°C.

Dated: November 13, 1992.

George E. Pratt,

Acting Administrator.

[FR Doc 92–31494 Filed 12–30–92; 8:45 am]

BILLING CODE 3410–15–F

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91–187–1]

Cattle from Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow calves younger than 4 weeks of age to be imported from Canada into the United States without being tested for tuberculosis. This change would expedite the international movement of the calves by allowing them to be transported upon demand, exempt from the requirement to be tested for tuberculosis and wait 72 hours for test results prior to importation into the United States. We are proposing this action because the low incidence of tuberculosis in Canadian cattle does not appear to justify the cost of testing such young animals. We believe that adoption of the proposed rule would streamline the importation process, reducing associated costs without presenting a significant risk of introducing additional tuberculosis into the United States. It would also have the humane effect of reducing the amount of stress borne by calves in transit.

Further, by deleting outdated provisions concerning the port-of-entry detention of cattle from Canada that do not meet our import requirements, we propose to bring the regulations into conformity with current practice.

DATES: Consideration will be given only to comments received on or before March 1, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–187–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Vogt, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 767, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation of cattle from Canada to prevent the introduction into the United States of communicable diseases of livestock.

Section 92.418(b) requires tuberculin-test certificates for all cattle intended for importation into the United States from Canada except cattle consigned directly for slaughter, or calves imported with their dams, as provided in § 92.418 (b)(2)(ii)(A) and (b)(2)(ii)(C), respectively.

It takes 72 hours from the time a tuberculin test is administered until the test results are known. Cattle from Canada cannot be imported into the United States until the test has been completed and a tuberculin-test certificate issued, showing the cattle to be tuberculosis-free, in accordance with § 92.418(b).

In Canada, where the incidence of bovine tuberculosis is low, the tuberculosis risk posed to or by calves younger than 4 weeks is virtually nonexistent. These young calves have minimal exposure to older animals in the herd and no exposure to animals outside the herd for at least their first 4 weeks. As these calves are kept under controlled conditions until they are strong enough to mingle with larger animals, there is minimal exposure to animals that could be infected with tuberculosis. Therefore, we are proposing to streamline the importation process by removing the requirement that calves younger than four weeks undergo tuberculosis testing before being moved from Canada into the United States.

Removing the tuberculosis-testing requirement for calves younger than 4 weeks would expedite the movement of cattle from Canada into the United States. It would reduce the costs borne by importers. The time saved would alleviate some of the stress borne by calves while in transit, without increasing the risk of introducing additional tuberculosis into the United States.

We are also proposing to remove from the regulations a provision that is no longer applicable to cattle intended for importation into the United States from Canada. Section 92.418(a) currently provides for the discretionary "detention at port of entry" of cattle inspected and found not qualified for immediate entry into the United States. This provision is obsolete. Rather than subject cattle to tests at a port-of-entry holding facility, we have for years preferred to refuse entry to cattle not immediately eligible for importation. We therefore have no reason to "detain" cattle. To clarify this potentially misleading provision in the current regulations and reflect standard practice, we are proposing to delete the provision in § 92.418(a) for port-of-entry detention and testing of cattle from Canada.

Further, we propose to make a nonsubstantive editorial change, removing the redundant footnote in the "Cattle from Canada" section heading.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

According to the most recent figures available (1990), approximately 44,000 calves younger than four weeks are imported from Canada into the United States annually, mostly for the production of veal. The market for these calves, which represent less than one-tenth of a percent of the total calf population in the United States, is extremely limited.

The proposed regulatory change would directly affect 10 entities that import calves from Canada. Nine of the ten are small entities. The single entity that is considered large accounted for 80 percent of the imports in 1990.

The proposed change would benefit all importers of young calves from Canada. It would relieve them of the costs incurred in testing the calves. Currently, the required tuberculin test, labor, feed, and retaining services amount to about $8 per animal. Further, young calves periodically die as a result of stress in the waiting stations where they remain for 72 hours. Death losses of imported young calves averaged 8 percent between 1976 and 1990, a death rate double that of U.S. calves. The value of an imported young calf (live) is about $170. Therefore, the small entities that import young calves from Canada would accrue only modest benefits from the proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this notice.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR part 92 would be amended as follows:

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.418, the section heading would be revised by removing the reference to footnote 7; in paragraph (a), the heading and the last sentence would be revised; paragraph (b)(2)(ii)(C) would be redesignated as paragraph (b)(2)(ii)(D); and a new paragraph (b)(2)(ii)(C) would be added, to read as follows:

§ 92.418 Cattle from Canada.

(a) *Health certificates.* * * * Cattle found unqualified upon inspection at the port of entry will be refused entry into the United States.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) * * *

(C) That the cattle are younger than four weeks of age and, therefore, exempt from the tuberculosis testing requirement; or

* * * * *

Done in Washington, DC, this 23rd day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–31670 Filed 12–30–92; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AA37

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is proposing to amend its assessments regulation to establish a new risk-based assessment system. The rulemaking is expressly required by section 302(a) of the FDIC Improvement Act of 1991. Under the proposed system, as under the transitional assessment system currently in effect, FDIC-insured depository institutions that are members of either the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF) would be assigned to one of nine assessment classifications based on the risk posed by the institution to the BIF or SAIF. The assessment rate applicable to each classification would remain unchanged from the rate in effect under the transitional system.

The Board proposes to retain other elements of the transitional system without substantial modification. However, several amendments are proposed. These amendments include limited revision of the review procedure and clarifications regarding supervisory subgroup assignments, capital group assignments for new institutions, and financial data for insured branches of foreign banks.

DATES: Written comments must be received by the FDIC on or before April 29, 1993.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (Fax number: (202) 898–3838). Comments will be available for inspection in the FDIC's Reading Room, room 7118, 550 17th Street, NW., Washington, DC on business days between 9 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: George French, Associate Director, Division of Research and Statistics, (202) 898–3929; William Farrell, Chief, Receipts Section, Division of Finance, (703) 516–5546; Cary Hiner, Manager, Analysis and Monitoring Section, Division of Supervision; or Martha L. Coulter, Counsel, Legal Division, (202) 898–7348.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

In the past, the premiums (or assessments) paid by banks and thrift institutions for federal deposit insurance have been based on a uniform rate. Under section 7 of the Federal Deposit Insurance Act, 12 U.S.C. 1817, the FDIC has been required to set a single rate for all BIF member institutions and a separate single rate for all SAIF members. Congress has recently mandated a change in this system.

Section 302(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. No. 102–242, 105 Stat. 2236) (FDIC Improvement Act), which was signed into law in December 1991, requires that the FDIC adopt regulations establishing a deposit insurance system under which the premiums paid by an institution are based on the risk it poses to the BIF or SAIF. Section 302(c) of the FDIC Improvement Act requires that notice of proposed regulations for implementing the new system be published no later than December 31, 1992, and that final regulations be promulgated by July 1, 1993. Under section 302(g), the regulations are to become effective no later than January 1, 1994.

Section 302(a) provides that, under the risk-based system established by the FDIC, the insurance assessments paid by an institution are to be based on the probability that the BIF or SAIF will incur a loss with respect to the institution. To this end, in establishing the system, the FDIC is to take into consideration risks attributable to the different categories and concentrations of assets and liabilities, as well as other factors the FDIC determines to be relevant in assessing the probability of loss. An institution's assessments are also to be based on the size of any loss the insurance fund might incur with respect to the institution, and on the revenue needs of the insurance fund. The statute expressly authorizes the FDIC to establish separate risk-based assessment systems for large and small members of each deposit insurance fund.

II. The Transitional Risk-Based Assessment System

A. Background

In addition to the risk-based assessment regulations mandated by section 302(a) of the FDIC Improvement Act, section 302(f) of that statute authorizes the FDIC to promulgate regulations governing the transition from the assessment system in effect on the date of enactment of the statute to the assessment system required under section 302(a). Pursuant to that authority, the FDIC has established a transitional assessment system. 57 FR 45262 (October 1, 1992). That system, which is effective for the semiannual assessment period beginning January 1, 1993, is to remain in effect until implementation of the statutorily-mandated system on January 1, 1994.

The transitional system was intended as a preliminary step toward the risk-based system mandated by section 302(a). It is anticipated that this approach will provide an opportunity for all interested parties to evaluate the impact and effectiveness of various components of an operational risk-based system before the new, mandatory risk-based system is finalized. Final decisions on the design of the new system will be made in part on the basis of experience with the transitional system.

B. Description of the Transitional System

Under the transitional system, the rate at which BIF and SAIF member institutions pay assessments is based principally on two measures of risk. These measures involve capital and supervisory factors. For the capital measure, institutions are assigned to one of three capital groups—"well capitalized" (group 1), "adequately capitalized" (group 2), or "undercapitalized" (group 3). These groups are defined in terms of capital-ratio standards. The standards used are the total risk-based capital ratio (10 percent or greater for group 1, between 8 and 10 percent for group 2), the Tier 1 risk-based capital ratio (6 percent or greater for group 1, between 4 and 6 percent for group 2), and the leverage capital ratio (5 percent or greater for group 1, between 4 and 5 percent for group 2).[1] Capital groups are determined by the FDIC from financial data reported on the institution's Report of Income and Condition or Thrift Financial report as of June 30 (for the assessment period beginning the following January) and December 31 (for the assessment period beginning the following July).

Within each capital group, institutions are assigned to one of three supervisory risk subgroups—subgroup A, B, or C. The subgroup assigned by the FDIC includes consideration of a supervisory evaluation provided to the FDIC by the institution's primary federal regulator, as well as such other information as the FDIC determines to be relevant to the institution's financial condition and the risk posed to the BIF or SAIF (which may include, where applicable, information provided by the institution's state supervisor).

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[1] For insured branches of foreign banks, two criteria are applied to determine capital group assignments. to be deemed either "well capitalized" or "adequately capitalized", the branch must maintain the pledge of assets required under 12 CFR 346.19, and must maintain the eligible assets prescribed under 12 CFR 346.20 at a certain percentage of the average book value of the insured branch's third-party liabilities (108 percent or more for the "well capitalized" group and between 106 percent and 108 percent for "adequately capitalized."

Under the transitional system, there are nine combinations of groups and subgroups (or assessment risk classifications) to which varying assessment rates are applicable. These rates range from 23 cents per $100 of domestic deposits (for institutions classified as "1A") to 31 cents (for "3C" institutions).

The transitional system includes an informal process by which an institution disagreeing with its assessment risk classification may seek review of that classification. A request for review must be submitted in writing within 30 days of the date of the letter notifying the institution of its assessment risk classification and must include documentation sufficient to support the reclassification sought by the institution. The request for review may include a request for an informal hearing.

The transitional system includes restrictions on disclosure of an institution's assessment risk classification. The regulation provides that the FDIC will treat the supervisory risk subgroup assignment as exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (1988)), and generally prohibits institutions from disclosing their subgroup assignments without FDIC authorization. In addition, the regulation prohibits disclosure of the assessment risk classification in advertisement or promotional material unless such disclosure is permitted by the FDIC or required by law.

III. Proposed Changes to the Transitional System

In establishing the new risk-based system, the FDIC proposes to retain the transitional system without substantial modification. Although limited changes are proposed, the Board believes that, due to the lack of operational experience with the transitional system, major modification would be premature at this time. The Board invites comment on this approach, as well as on each of the proposed changes. In addition, as discussed below, the Board invites comment on a number of specific alternative risk classification systems and premium rate spreads.

One change involves the review procedure, which the Board proposes to amend by eliminating the express provision for an informal hearing. Other proposed changes would clarify the basis for subgroup assignments, provide for the assignment of new institutions to the "well capitalized" group, require timely payment of assessments at the rate assigned whether or not requests for review have been filed, include a provision pertaining to lifeline accounts, and make certain clarifications concerning financial data applicable to capital group assignments for insured branches of foreign banks. In addition to proposing these revisions, the Board requests comment on several other issues, and preliminarily addresses the matter of redefinition of the assessment base.

In the Board's view, the new risk-based assessment system, as proposed, fully satisfies the requirements for the new system as mandated by section 302(a) of the FDIC Improvement Act.

A. Clarifications Regarding Subgroup Assignments

The FDIC's focus in assigning institutions to one of the three subgroups is the risk posed by the institution to its deposit insurance fund. In making subgroup assignments, the FDIC weighs heavily the supervisory evaluations provided to the FDIC by the institution's primary federal regulator.[2] These supervisory evaluations are communicated to institutions by their primary federal regulators in the form of composite ratings.

Although the FDIC weighs these supervisory evaluations heavily in making subgroup assignments, the evaluations are not the sole basis for those assignments. As a result, it is expected that there will be some instances in which the FDIC's determination of risk profile for purposes of making subgroup assignments will differ from the primary federal regulator's supervisory evaluation. In such cases, the institution will be assigned to a subgroup that may not be consistent with the primary federal regulator's supervisory evaluation. The FDIC proposes to clarify this element of the risk-based system by amending the provision of the transitional regulation addressing subgroup assignments.

B. Assessment Review Procedure

The Board proposes to amend the review procedure set forth in the transitional regulation by deleting references to an informal hearing. In proposing this change, the Board does not intend to eliminate the opportunity for an institution requesting review to make an oral presentation to the Director of the Division of Supervision or his representative. Rather, the purpose of the amendment is to avoid any misperception that a more formal administrative proceeding was contemplated. It is the Board's intention that the FDIC will, at its discretion, permit an oral presentation by an institution seeking review of its assessment risk classification when the Director of the Division of Supervision or his representative determines that such a presentation would be productive under the applicable circumstances.

C. Other Proposed Changes

1. Capital Group for New Institutions

The regulation governing the transitional system does not expressly state how institutions coming into existence during a particular semiannual assessment period, and which have not filed the relevant financial reports at the end of the preceding semiannual period, are to be treated with respect to capital group assignments for the next assessment period. The proposed regulation governing the new system adds a provision to this effect. This provision states that such institutions will be included in the "well capitalized" group for the first period for which they are required to pay assessments.[3]

2. Payment of Disputed Assessment

The proposed regulation also includes a new provision clarifying that institutions must make timely payment of their assessments at the rate assigned to them, without regard to whether the institution has filed a request for review of its assessment risk classification. If the classification originally assigned is later revised, resulting in an overpayment, the FDIC would refund or credit the amount of the overpayment to the institution, with interest.

3. Lifeline Accounts

Section 1605 of the Housing and Community Development Act of 1992 (Pub. L. No. 102–550, 102 Stat. 3672) enacted in October, adds a new provision concerning "lifeline accounts" to section 7(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b). The new provision requires that the FDIC design the new risk-based assessment system so that, to the extent assessments are based on deposits, that portion of an institution's deposits that are attributable to lifeline accounts shall be subject to assessment at a rate established in accordance with the Bank Enterprise Act of 1991, 12 U.S.C. 1834.

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[2] The FDIC also acts in this regard as the primary federal regulator for insured state nonmember banks.

[3] This provision would not be applicable to new bridge banks, which would be covered by the provision already included in the transition regulation specifically applicable to such institutions.

Lifeline accounts have not yet come into existence, so no rate applicable to such accounts has yet been established. However, because the purpose of this rulemaking proceeding is to design the new risk-based assessment system, and because assessments will, at least initially, be based on deposits under this system, the Board believes it is advisable, pursuant to section 1605 of the Housing and Community Development Act of 1992 (Pub. L. 102–485, 106 Stat. 2773), to include an appropriate provision concerning lifeline accounts. The provision proposed by the Board states that the portion of an institution's average assessment base that is attributable to deposits in lifeline accounts will be assessed at such rate as may be established by the FDIC with respect to such accounts.

4. Clarifications Regarding Insured Branches of Foreign Banks

The transitional regulation establishes capital group standards for insured branches of foreign banks. The proposed regulation would amend the capital group provisions to clarify that these standards are applied based on information provided in the insured branch's Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. The proposal would further clarify that the report date for the relevant financial data (including the average book value of the insured branch's third-party liabilities) is the same as the report date applicable to the capital group assignments for domestic institutions.[4]

IV. Additional Requests for Comment

A. Alternative Risk Classifications/ Wider Rate Spread

During the rulemaking proceeding on the transitional system, the FDIC requested public comment as to whether a separate category should be established for institutions posing minimal risk to the deposit insurance funds. The issue received a significant level of attention from commenters, most of which was favorable. Although the FDIC at that time recognized the merits of a minimal risk classification, it decided that such an element was more appropriate for the system to be become effective by January 1, 1994, rather than for an interim step toward that system.

The proposed new system does not include a minimal risk classification. The Board believes that it would be helpful for all parties to have more experience with the rate structure of the transitional system before making a determination as to whether an additional classification should be included.

Nonetheless, the Board invites comment on whether a separate minimal risk classification should be established and, if so, how it should be defined. For example, under one approach being explored by the FDIC, the minimal risk classification would be defined by a two-part test. First, for an institution to be designated as "minimal risk", either the certificates of deposits it issues must be rated "AAA" by at least one nationally recognized rating agency, or it must have capital ratios that exceed by 50 percent or more the capital ratios required for "well capitalized" institutions. Second, the risk posed by the institution to its deposit insurance fund must be judged by the FDIC to be minimal. The Board requests comment on this definition, as well as on other definitions commenters might deem more appropriate.

The Board also seeks comment on whether the assessment rate spread embodied in the transitional system—23 to 31 basis points—should be widened, and if so, by how much. Finally, the Board seeks comment on whether the existing three-by-three risk classification system should be expanded to include more supervisory risk subgroups and capital categories and, if so, how.

The recommended premium-rate schedule is presented in Table 1, and additional information is provided in Tables 2 and 3. In connection with the Board's specific requests for comment on alternative risk-classification systems and a wider rate spread, a number of alternative approaches and schedules are shown in Tables 4 through 10. For each approach to risk classification, a number of alternative premium-rate matrices are presented. These are intended to provide information about the tradeoff between the lowest and highest premium rates as the rate-spread widens, and thereby allow for more informed public comment. Each premium-rate schedule is estimated to yield about the same aggregate assessment revenue as the current transitional premium-rate schedule. This is for illustrative purposes only, as the revenue needs of the FDIC, or the distribution of institutions among insurance groups, may change over time. Also, the alternatives presented should not be viewed as proposed increases in assessment rates. The purpose here is to solicit comment on the structure of a risk-based assessment system, not to propose rates different from those currently in effect.

The current transitional risk-related premium-rate schedule, and the estimated distribution of institutions among insurance groups are presented in Tables 1 and 2, respectively. The current framework is a three-by-three matrix consisting of three capital groups and three supervisory risk subgroups for a total of nine insurance groups. Table 3 shows the distribution of premium rates paid by various size categories of BIF- and SAIF-insured institutions. Table 4 presents two alternative premium-rate schedules that are revenue-neutral for the BIF fund, that is, they yield approximately the same assessment revenue to the FDIC as the schedule in Table 1. In general, the alternative schedules show that to reduce the premium rate for institutions in insurance group 1A, the rates for other groups must be increased substantially. This is due to the fact that 53.8 percent of the BIF-insured's assessment base is estimated to be in group 1A. Therefore, to maintain a constant assessment revenue for the BIF fund, every basis point decrease for group 1A must be offset by a sizable increase for other insurance groups.

Tables 5 through 10 present three alternative risk-classification systems and a number of alternative premium-rate schedules. Tables 5 and 6 show the premium-rate schedules and the distribution of institutions, respectively, for the three-by-three classification system plus a "minimal risk" group defined above. As shown in Table 6, the minimal risk group is estimated to have 5.8 percent of the BIF-insured's assessment base. Therefore, to maintain revenue-neutrality and to lower the minimal risk group's premium rate by, say, three basis points would require a much smaller offsetting increase in rates elsewhere than was the case in the three-by-three classification system. This can be seen by comparing Tables 4 and 5.

Tables 7 and 8 present hypothetical premium-rate schedules and the distribution of institutions, respectively, for a four-by-six classification system. In this system there would be a fourth "very well-capitalized" group consisting of institutions exceeding all the numerical capital ratios required for "well-capitalized" institutions by at least 50 percent. In addition, there would be three additional supervisory risk subgroups. These would be obtained by subdividing each of the three supervisory risk subgroups in the transitional system into two subgroups. The various premium-rate schedules in Table 7 illustrate the offsetting changes in premium rates that are necessary in this framework to widen the premium rate spread while also maintaining constant assessment revenue for the BIF fund. As compared with Tables 1, 4 and 5, the schedules in Table 7 have smaller premium increments between insurance groups, for a given spread between the lowest and highest rates.

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[4] In effect, this amendment clarifies that the term "preceding quarter" as used in §§ 327.3(e)(1)(A)(*2*) and (B)(*2*)(*ii*) means the quarter ending on June 30 for the assessment period beginning the following January, and on December 31 for the period beginning the following July.

Tables 9 and 10 present hypothetical premium-rate schedules and the distribution of institutions, respectively, for a four-by-four classification system. In this system, the same "very well-capitalized" capital category as discussed above is included, as well as one additional supervisory risk subgroup. This additional subgroup is obtained by subdividing supervisory risk subgroup "A" in the transitional system into two subgroups.

The Board solicits comments on the various risk-classification systems illustrated in the Tables, as well as on alternative systems. The Board is particularly interested in commenters' views as to whether an expansion of the number of supervisory risk subgroups is appropriate, or whether the existing three-by-three framework with the addition of a single minimal-risk group is preferable. In light of the degree of the tradeoff between the highest and lowest premiums illustrated in the Tables, the Board seeks comments on the most appropriate degree (if any) to which the existing rate spread ought to be widened.

TABLE 1

Capital group	Supervisory risk subgroup		
	A	B	C
1. Well	23 BP	26 BP	29 BP
2. Adequate	26 BP	29 BP	30 BP
3. L.T. Adequate	29 BP	30 BP	31 BP
4. Bridge Bank or Conservatorship	26 BP		

Effective Premium Rate: BIF: 25.14 BP; SAIF: 25.61 BP.

TABLE 2.—BIF-INSURED INSTITUTIONS

Capital group	Supervisory risk subgroup		
	A	B	C
1. Well: T1CAPP>=5% & RBCT1P>=6% & RBCTOTP>=10%	N: 8964 75.5% ASST($B): 1802.9 51.4% BASE ($B): 1302.1 53.8%	N: 1644 13.9% ASST($B): 383.9 11.0% BASE ($B): 310.1 12.8%	N: 502 4.2% ASST($B): 97.4 2.8% BASE ($B): 79.7 3.3%
2. Adequate: T1CAPP>=4% & RBCT1P>=4% & RBCTOTP>=8%	N: 205 1.7% ASST($B): 400.7 11.4% BASE ($B): 274.4 11.3%	N: 132 1.1% ASST($B): 449.5 12.8% BASE ($B): 261.4 10.8%	N: 195 1.6% ASST($B): 279.5 8.0% BASE ($B): 119.2 4.9%
Else: 3. L.T. Adequate	N: 16 0.1% ASST($B): 9.4 0.3% BASE($B): 2.2 0.1%	N: 16 0.1% ASST($B): 1.4 0.0% BASE ($B): 1.2 0.0%	N: 194 1.6% ASST($B): 71.5 2.0% BASE ($B): 61.9 2.6%
Else: 4. Bridge bank	N: 2 0.0% ASST($B): 10.0 0.3% BASE ($B): 8.7 0.4%		

Note: (1) Financial data: 6/30/92; Supervisory info: 10/31/92; (2) some adjustment for OAKARS is made; (3) FSB's are included and IBA's are excluded from the sample.

SAIF-INSURED INSTITUTIONS

Capital group	Supervisory risk subgroup		
	A	B	C
Well: T1CAPP>=5% & RBCT1P>=6% & RBCTOTP>=10%	N: 1549 63.5% ASST($B): 437.6 46.5% BASE ($B): 361.1 47.9%	N: 225 9.2% ASST($B): 69.8 7.4% BASE ($B): 53.2 7.1%	N: 38 1.6% ASST($B): 17.7 1.9% BASE ($B): 13.6 1.8%
2. Adequate: T1CAPP>=4% & RBCT1P>=4% & RBCTOTP>=8%	N: 168 6.9% ASST($B): 151.3 16.1% BASE ($B): 121.6 16.1%	N: 138 5.7% ASST($B): 84.5 9.0% BASE ($B): 64.5 8.6%	N: 73 3.0% ASST($B): 30.1 3.2% BASE ($B): 24.0 3.2%
Else: 3. L.T. Adequate	N: 11 0.5% ASST($B): 3.3 0.4% BASE ($B): 2.9 0.4%	N: 44 1.8% ASST($B): 15.2 1.6% BASE ($B): 12.0 1.6%	N: 134 5.5% ASST($B): 103.0 11.0% BASE ($B): 80.9 10.7%
4. Conservatorships	N: 59 2.4%		

SAIF-Insured Institutions—Continued

Capital group	Supervisory risk subgroup		
	A	B	C
	ASST($B): 27.8 3.0% BASE ($B): 19.7 2.6%		

Note: (1) Financial data: 6/30/92; Supervisory info: 10/31/92; (2) some adjustment for OAKARS is made.

Table 3.— Asset-Size Distribution by Premium Rates for BIF-Insured Depository Institutions

Premium rate	Asset-Size Group							
	GE $1B				$100M to $1B			
	N	Column Percent	Assets ($Bil)	Column Percent	N	Column percent	Assets ($Bil)	Column percent
23 bp	239	57.3	1021.8	41.9	2168	73.6	511.8	71.1
26 bp	94	22.5	614.8	25.2	502	17.0	128.6	17.9
29 bp	48	11.5	491.6	20.2	161	5.5	48.1	6.7
30 bp	21	5.0	259.3	10.6	62	2.1	16.3	2.3
31 bp	15	3.6	51.5	2.1	53	1.8	15.3	2.1
Total	417	100	2,439.0	100	2,946	100	720.1	100

Premium rate	Asset-Size Group							
	LT $100M				Total			
	N	Column percent	Assets ($Bil)	Column percent	N	Column percent	Assets ($Bil)	Column percent
23 bp	6557	77.1	269.2	77.6	8964	75.5	1802.9	51.4
26 bp	1255	14,8	51.3	14.8	1851	15.6	794.6	22.7
29 bp	441	5.2	16.6	4.8	650	5.5	556.3	15.9
30 bp	128	1.5	5.3	1.5	211	1.8	280.9	8.0
31 bp	126	1.5	4.7	1.3	194	1.6	71.5	2.0
Total	8,507	100	347.0	100	11,870	100	3,506.1	100

Note: (1) the financial information is as of 6/30/92; (2) (OTS—chartered) FSB's are included and an adjustment is made for Oakar's; however, IBA's are not included in the sample.

Asset-Size Distribution by Premium Rates for SAIF-Insured Depository Institutions

Premium rate	Asset-Size Group							
	GE $1B				$100M to $1B			
	N	Column percent	Assets ($Bil)	Column percent	N	Column percent	Assets ($Bil)	Column percent
23 bp	101	46.3	251.2	40.6	653	62.0	149.8	56.1
26 bp	54	24.8	178.3	28.8	209	19.8	61.7	23.1
29 bp	29	13.3	78.3	12.7	83	7.9	23.2	8.7
30 bp	14	6.4	31.8	5.2	43	4.1	10.5	3.9
31 bp	20	9.2	78.4	12.7	65	6.2	22.1	8.3
Total	218	100	618.1	100	1,053	100	267.2	100

Premium rate	Asset-Size Group							
	LT $100M				Total			
	N	Column percent	Assets ($Bil)	Column percent	N	Column percent	Assets ($Bil)	Column percent
23 bp	795	68.1	36.6	66.5	1549	63.5	437.6	46.5
26 bp	188	16.1	8.9	16.1	451	18.5	248.8	26.5
29 bp	75	6.4	4.0	7.3	187	7.7	105.5	11.2
30 bp	60	5.1	3.0	5.4	117	4.8	45.3	4.8
31 bp	49	4.2	2.6	4.6	134	5.5	103.0	11.0
Total	1,167	100	55.0	100	2,438	100	940.2	100

Note: (1) the financial information is as of 6/30/92; (2) an adjustment is made for Oakar's; however, IBA's are not included in the sample.

Table 4.—Supervisory Risk Subgroup

Capital group	A	B	C
1. Well	20 BP	28 BP	33BP
2. Adequate	28 BP	33BP	36 BP
3. L.T. adequate	33 BP	36 BP	40 BP
4. Bridge Bank or conservatorship	28 BP	....	

Effective premium rate: BIF: 25.11 BP, SAIF: 26.37 BP.

SUPERVISORY RISK SUBGROUP

Capital group	A	B	C
1. Well	18 BP	30 BP	35 BP
2. Adequate	30 BP	35 BP	40 BP
3. L.T. Adequate	35 BP	40 BP	45 BP
4. Bridge Bank or conservatorship	30 BP	...	

Effective premium rate: BIF: 25.14 BP, SAIF: 26.87 BP.

TABLE 5.—SUPERVISORY RISK SUBGROUP

Capital group	A+: minimal risk*	A	B	C
0 Minimal risk*	20 BP	...	...	
1. Well	...	23,5 BP	26 BP	29 BP
2. Adequate	...	26 BP	29 BP	30 BP
3. L.T. adequate	...	29 BP	30 BP	31 BP
4. Bridge bank or conservatorship	26 BP	...	...	

Effective premium rate: BIF: 25.20 BP, SAIF: 25.66 BP.

TABLE 5.—SUPERVISORY RISK SUBGROUP

Capital group	A+: minimal risk*	A	B	C
0. Minimal Risk*	20 BP	...	...	
1. Well	...	23 BP	26 BP	29 BP
2. Adequate	...	26 BP	29 BP	32 BP
3. L.T. Adequate	...	29 BP	32 BP	35 BP
4. Bridge bank or conservatorship	26 BP	...	...	

Effective premium rate: BIF: 25.17 BP, SAIF: 25.97 BP.

TABLE 5.—SUPERVISORY RISK SUBGROUP

Capital group	A+: minimal risk*	A	B	C
0. Minimal risk*	18 BP	...	...	
1. Well	...	23 BP	26 BP	29 BP
2. Adequate	...	26 BP	29 BP	34 BP
3. L.T. Adequate	...	29 BP	34 BP	36 BP
4. Bridge Bank or conservatorship	26 BP	...	...	

Effective premium rate: BIF: 25.17 BP, SAIF: 25.07 BP.

TABLE 6.—BIF—INSURED INSTITUTIONS

[Supervisory risk subgroup]

Capital group	A+: minimal risk*		A		B		C	
		Percent		Percent		Percent		Percent
0. Minimal risk:*								
	N: 1797	15.1	...	...	...	...	...	...
	Asst ($B): 272.0	7.8	...	...	...	...	...	...
	Base ($B): 141.4	5.8	...	...	...	...	...	...
1. Well:								
T1CAPP>=5%	...	...	N: 7167	60.4	N: 1644	13.9	N: 502	4.2
& RBCT1P>=6%	...	...	Asst($B): 1530.9	43.7	Asst($B): 383.9	11.0	Asst($B): 97.4	2.8
& RBCT0TP>=10%	...	...	Base ($B): 1160.8	47.9	Base ($B): 310.1	12.8	Base ($B): 79.7	3.3
2. Adequate:								
T1CAPP>=4%	...	...	N: 205	1.7	N: 132	1.1	N: 195	1.6
& RBCT1P>=4%	...	...	Asst($B): 400.7	11.4	Asst($B): 449.5	12.8	Asst($B): 279.5	8.0
& RBCT0TP>=8%	...	...	Base ($B): 274.4	11.3	Base ($B): 261.4	10.8	Base ($B): 119.2	4.9
3. L.T. Adequate:								
	...	...	N: 16	0.1	N: 16	0.1	N: 194	1.6
	...	...	Asst($B): 9.4	0.3	Asst($B): 1.4	0.0	Asst($B) 71.5	2.0
	...	...	Base ($B): 2.2	0.1	Base ($B): 1.2	0.0	Base ($B): 61.9	2.6
4. Bridge bank:								
	N: 2	0.0	...	...	...	...	...	...
	Asst($B): 10.0	0.3	...	...	...	...	...	...
	Base ($B): 8.7	0.4	...	...	...	...	...	...

Note: (1) Financial data: 6/30/92; Supervisory info:10/31/92; (2) some adjustment for OAKARS is made: (3) FSB's are included and IBA's are excluded from the sample.

SAIF—INSURED INSTITUTIONS

[Supervisory risk subgroup]

Capital group	A+: minimal risk *		A		B		C	
		Percent		Percent		Percent		Percent
0. Minimal risk: *.		-						
	N: 280	11.5	....	....	....	....	....	....
	Asst($B): 48.3	5.1	....	....	....	....	....	....
	Base ($B): 40.7	5.4	....	....	....	....	....	....
1. Well:								
T1CAPP>=5%	....	....	N: 1269	52.0	N: 225	9.2	N: 38	1.6
&RBCT1P>=6%	....	....	Asst($B): 389.3	41.4	Asst($B): 69.8	7.4	Asst($B): 17.7	1.9
&RBCTOTP>=10%	....	....	Base ($B): 320.4	42.5	Base ($B): 53.2	7.1	Base ($B): 13.6	1.8
2. Adequate:								
T1CAPP>=4%	....	....	N: 168	6.9	N: 138	5.7	N: 73	3.0
$RBCT1P>=4%	....	....	Asst($B): 151.3	16.1	Asst($B): 84.5	9.0	Asst($B): 30.1	3.2
$RBCTOTP>=8%	....	....	Base ($B): 121.6	16.1	Base ($B): 64.5	8.6	Base ($B): 24.0	3.2
3. L.T. Adequate:								
	....	....	N: 11	0.5	N: 44	1.8	N: 134	5.5
	....	....	Asst($B): 3.3	0.4	Asst($B): 15.2	1.6	Asst($B): 103.0	11.0
	....	....	Base ($B): 2.9	0.4	Base ($B): 12.0	1.6	Base ($(B) 80.9	10.7
4. Conservatorships:								
-	N: 59	2.4	....	....	....	....	....	....
	Asst($B): 27.8	3.0	....	....	....	....	....	....
	Base ($B): 19.7	2.6	....	....	....	....	....	....

Note: (1) Financial data: 6/30/92; Supervisory info: 10/31/92; (2) some adjustment for OAKARS is made.

* The criteria for the Minimal Risk group are: (1) member of insurnace group 1A and (ii) be judged by regulators to have no substantive weaknesses and (iii) satisfy one of the following conditions:

a) have a 'AAA' rating on CD's; (b) T1CAPP>=7.5% and RBCT1P>=9%, and RBCTOTP>=15%.

TABLE 7

Capital group	Supervisory risk subgroup					
	A	B	C	D	E	F
0. Very well	23 BP	23 BP	24 BP	24 BP	26 BP	26 BP
1. Well	24 BP	24 BP	25 BP	26 BP	28 BP	29 BP
2. Adequate	25 BP	25 BP	27 BP	28 BP	29 BP	30 BP
3. L.T. Adequate	27 BP	27.5 BP	29.5 BP	30 BP	30.5 BP	31 BP
4. Bridge Bank or Conservatorship	25 BP					

Effective Premium rate: BIF: 25.27 BP; SAIF: 25.80 BP.

Capital group	Supervisory risk subgroup					
	A	B	C	D	E	F
0. Very well	20 BP	21 BP	22 BP	23 BP	25 BP	26 BP
1. Well	22 BP	23 BP	25 BP	26 BP	27 BP	29 BP
2. Adequate	25 BP	27 BP	29 BP	30 BP	31 BP	33 BP
3. L.T. Adequate	30 BP	32 BP	34 BP	35 BP	36 BP	38 BP
4. Bridge Bank or Conservatorship	25 BP					

Effective Premium Rate: BIF: 25.13 BP; SAIF: 26.45 BP.

Capital group	Supervisory risk subgroup					
	A	B	C	D	E	F
0. Very well	18 BP	20 BP	21 BP	22 BP	24 BP	27 BP
1. Well	22 BP	24 BP	25 BP	26 BP	28 BP	30 BP
2. Adequate	25 BP	27 BP	29 BP	30 BP	32 BP	35 BP
3. L.T. Adequate	30 BP	32 BP	34 BP	36 BP	38 BP	40 BP
4. Bridge Bank or Conservatorship	25 BP					

Effective Premium Rate: BIF: 25.35 BP; SAIF: 26.86 BP.

TABLE 8.—BIF—INSURED INSTITUTIONS

[Supervisory Risk Subgroup]

Capital group	A	B	C	D	E	F
0. Very well: T1CAPP>=7.5% & RBCT1P>=9% & RBCTOTP>=15%	N: 1796 15.1% ASST($B): 186.5 5.3% BASE($B): 135.0 5.6%	N: 3337 28.1% ASST($B): 293.8 8.4% BASE($B): 235.0 9.7%	N: 274 2.3% ASST($B): 20.1 0.6% BASE($B): 17.1 0.7%	N: 273 2.3% ASST($B): 20.1 0.6% BASE($B): 17.1 0.7%	N: 89 0.7% ASST($B): 5.4 0.2% BASE($B): 4.6 0.2%	N: 1 0.0% ASST($B): 0.0 0.0% BASE($B): 0.0 0.0%
ELSE: 1. Well: T1CAPP>=5% & RBCT1P>=6% & RBCTOTP>=10%	N: 565 4.8% ASST($B): 301.7 8.6% BASE($B): 162.0 6.7%	N: 3205 27.0% ASST($B): 936.2 26.7% BASE($B): 702.4 29.0%	N: 573 4.8% ASST($B): 202.4 5.8% BASE($B): 163.4 6.7%	N: 572 4.8% ASST($B): 202.4 5.8 % BASE($B): 163.4 6.7%	N: 414 3.5% ASST($B): 113.0 3.2% BASE($B): 89.6 3.7%	N: 11 0.1% ASST($B): 2.7 0.1% BASE($B): 2.4 0.1%1
ELSE: 2. Adequate: T1CAPP>=4% & RBCT1P>=4% & RBCTOTP>=8%	N: 18 0.2% ASST($B): 27.6 0.8% BASE($B): 19.5 0.8%	N: 184 1.6% ASST($B): 193.4 5.5% BASE($B): 142.3 5.9%	N: 61 0.5% ASST($B): 286.3 8.2% BASE($B): 166.4 6.9%	N: 61 0.5% ASST($B): 266.3 8.2% BASE($B): 166.4 6.9%	N: 192 1.6% ASST($B): 332.6 9.5% BASE($B): 157.2 6.5%	N: 16 0.1% ASST($B): 3.3 0.1% BASE($B): 3.0 0.1%
ELSE: 3. L.T. Adequate	N: 1 0.0% ASST($B): 0.0 0.0% BASE($B): 0.0 0.0%	N: 15 0.1% ASST($B): 9.4 0.3% BASE($B): 2.2 0.1%	N: 7 0.1% ASST($B): 0.7 0.0% BASE($B): 0.6 0.0%	N: 7 0.1% ASST($B): 0.7 0.0% BASE($B): 0.6 0.0%	N: 92 0.8% ASST($B): 18.1 0.5% BASE($B): 16.3 0.7%	N: 104 0.9% ASST($B): 53.5 1.5% BASE($B): 45.7 1.9%
4. Bridge Bank	N: 2 0.0% ASST($B): 10.0 0.3% BASE($B): 8.7 0.4%					

Note: (1) Financial data: 6/30/92; Supervisory info: 10/31/92; (2) some adjustment for OAKARS is made; (3) FSB's are included and IBA's are excluded from the sample.

SAIF—INSURED INSTITUTIONS

[Supervisory Risk Subgroup]

Capital group	A	B	C	D	E	F
0. Very well: T1CAPP>=7.5% & RBCT1P>=9% & RBCTOTP>=15%	N: 261 11.5% ASST($B): 48.4 5.1% BASE($B): 40.7 5.4%	N: 489 20.1% ASST($B): 73.0 7.8% BASE($B): 62.7 8.3%	N: 21 0.9% ASST($B): 5.2 0.6% BASE($B): 4.1 0.6%	N: 21 0.9% ASST($B): 5.2 0.6% BASE($B): 4.1 0.6%	N: 8 0.3% ASST($B): 0.5 0.1% BASE($B): 0.4 0.1%	N: 0 0.0% ASST($B): 0.0% BASE($B): 0.0%
ELSE: 1. Well: T1CAPP>=5% & RBCT1P>=6% & RBCTOTP>=10%	N: 52 2.1% ASST($B): 37.4 4.0% BASE($B): 25.7 3.4%	N: 635 26.0% ASST($B): 234.6 25.0% BASE($B): 194.3 25.8%	N: 114 4.7% ASST($B): 36.9 3.9% BASE($B): 31.0 4.1%	N: 114 4.7% ASST($B): 36.9 3.9% BASE($B): 31.0 4.1%	N: 77 3.2% ASST($B): 46.8 5.0% BASE($B): 33.9 4.5%	N: 0 0.0% ASST($B): 0.0% BASE($B): 0.0%
ELSE: 2. Adequate: T1CAPP>=4% & RBCT1P>=4% & RBCTOTP>=8%	N: 2 0.1% ASST($B): 0.8 0.1% BASE($B): 0.5 0.1%	N: 108 4.4% ASST($B): 122.9 13.1% BASE($B): 99.6 13.2%	N: 81 3.3% ASST($B): 37.2 4.0% BASE($B): 26.9 3.8%	N: 80 3.3% ASST($B): 37.2 4.0% BASE($B): 28.9 3.8%	N: 102 4.2% ASST($B): 64.9 6.9% BASE($B): 50.0 6.6%	N: 6 0.2% ASST($B): 3.0 0.3% BASE($B): 2.3 0.3%
ELSE: 3. L.T. Adequate	N: 0 0.0% ASST($B): 0.0% BASE($B): 0.0%	N: 5 0.2% ASST($B): 2.6 0.3% BASE($B): 1.6 0.2%	N: 14 0.6% ASST($B): 2.0 0.2% BASE($B): 1.8 0.2%	N: 13 0.5% ASST($B): 2.0 0.2% BASE($B): 1.8 0.2%	N: 78 3.2% ASST($B): 41.8 4.4% BASE($B): 33.6 4.5%	N: 79 3.2% ASST($B): 73.2 7.8% BASE($B): 57.1 7.6%
4. Conservatorships	N: 59 2.4% ASST($B): 27.8 3.0% BASE($B): 19.7 2.6%					

Note: (1) Financial data: 6/30/92; Supervisory info: 10/31/92; (2) some adjustment for OAKARS is made.

TABLE 9

Capital Group	Supervisory Risk Subgroup			
	A	B	C	D
0. Very well	23 BP	23 BP	25 BP	27 BP
1. Well	23 BP	23 BP	26 BP	28 BP
2. Adequate	25 BP	26 BP	28 BP	30 BP
3. L.T. Adequate	28 BP	29 BP	30 BP	31 BP
4. Bridge Bank or Conservator ship	25 BP			

Effective premium rate: BIF: 25.19 BP; SAIF: 25.82 BP.

Capital Group	Supervisory Risk Subgroup			
	A	B	C	D
0. Very well	20 BP	21 BP	23 BP	25 BP
1. Well	22 BP	23 BP	25 BP	28 BP
2. Adequate	25 BP	27 BP	29 BP	33 BP
3. L.T. Adequate	29 BP	31 BP	34 BP	37 BP
4. Bridge Bank or Conservator ship	25 BP			

Effective premium rate: BIF: 25.15 BP; SAIF: 26.52 BP.

Capital Group	Supervisory Risk Subgroup			
	A	B	C	D
0. Very well	18 BP	20 BP	23 BP	26 BP
1. Well	21 BP	23 BP	25 BP	28 BP
2. Adequate	25 BP	27 BP	30 BP	34 BP
3. L.T. Adequate	29 BP	31 BP	35 BP	40 BP
4. Bridge Bank or Conservator ship	25 BP			

Effective premium rate: BIF: 25.16 BP; SAIF: 26.80 BP.

TABLE 10.—BIF—INSURED INSTITUTIONS

Capital group	Supervisory Risk subgroup			
	A	B	C	D
O. Very Well: T1CAPP>=7.5% &RBCT1P>=9% &RBCTOTP>=15%	N: 1796 15.1% ASST($B): 186.5 5.3% BASE($B): 135.0 5.6%	N: 3337 28.1% ASST($B): 293.8 8.4% BASE($B): 235.0 9.7%	N: 547 4.6% ASST($B): 40.2 1.1% BASE($B): 34.2 1.4%	N: 90 0.8% ASST($B): 5.4 0.2% BASE($B): 4.6 0.2%
ELSE: WELL. T1CAPP>=5% &RBCT1P>=6% &RBCTOTP>=10%	N: 565 4.8% ASST($B): 301.7 8.6% BASE($B): 162.0 6.7%	N: 3205 27.0% ASST($B): 936.2 26.7% BASE($B): 702.4 29.0%	N: 1145 9.6% ASST($B): 404.8 11.5% BASE($B): 326.7 13.5%	N: 425 3.6% ASST($B): 115.7 3.3% BASE($B): 92.0 3.8%
ELSE: 2. ADEQUATE: T1CAPP>=4% &RBCT1P>=4% &RBCTOTP>=8%	N: 18 0.2% ASST($B): 27.6 0.8% BASE($B): 19.5 0.8%	N: 184 1.6% ASST($B): 193.4 5.5% BASE($B): 142.3 5.9%	N: 122 1.0% ASST($B): 572.6 16.3% BASE($B): 332.9 13.8%	N: 208 1.8% ASST($B): 335.9 9.6% BASE($B): 160.2 6.6%
ELSE: 3. L.T. ADEQUATE	N: 1 0.0% ASST($B): 0.0 0.0% BASE($B): 0.0 0.0%	N: 15 0.1% ASST($B): 9.4 0.3% BASE($B): 2.2 0.1%	N: 14 0.1% ASST($B): 1.3 0.0% BASE($B): 1.1 0.0%	N: 196 1.7% ASST($B): 71.6 2.0% BASE($B): 62.0 2.6%
4. BRIDGE BANK	N: 2 0.0% ASST($B): 8.7 0.4% BASE($B): 10.0 0.3%			

Note: (1) Financial data: 6/30/92; Supervisory info: 10/31/92; (2) some adjustment for OAKARS is made: (3) FSB's are included and IBA's are excluded from the sample.

SAIF—INSURED INSTITUTIONS

Capital Group	Supervisory Risk Group			
	A	B	C	D
O. Very Well: T1CAPP>=7.5% &RBCT1P>=9% &RBCTOTP>=15%	N: 281 11.5% ASST($B): 48.4 5.1% BASE($B): 40.7 5.4%	N: 489 20.0% ASST($B): 73.0 7.8% BASE($B): 62.7 8.3%	N: 42 1.7% ASST($B): 10.5 1.1% BASE($B): 8.3 1.1%	N: 8 0.3% ASST($B): 0.5 0.1% BASE($B): 0.4 0.1%
ELSE: WELL. T1CAPP>=5% &RBCT1P>=6% &RBCTOTP>=10%	N: 52 2.1% ASST($B): 37.4 4.0% BASE($B): 25.7 3.4%	N: 635 26.0% ASST($B): 234.6 25.0% BASE($B): 194.3 25.8%	N: 228 0.3% ASST($B): 73.8 7.8% BASE($B): 62.0 8.2%	N: 77 3.2% ASST($B): 46.8 5.0% BASE($B): 33.9 4.5%
ELSE: 2. ADEQUATE: T1CAPP>=4% &RBCT1P>=4% &RBCTOTP>=8%	N: 2 0.1% ASST($B): 0.8 0.1% BASE($B): 0.5 0.1%	N: 108 4.4% ASST($B): 122.9 13.1% BASE($B): 99.6 13.2%	N: 161 6.6% ASST($B): 74.4 7.9% BASE($B): 57.8 7.7%	N: 108 4.4% ASST($B): 67.9 7.2% BASE($B): 52.2 6.9%
ELSE: 3. L.T. ADEQUATE	N: 0 0.0% ASST($B): 0.0% BASE($B): 0.0%	N: 5 0.2% ASST($B): 2.6 0.3% BASE($B): 1.6 0.2%	N: 27 1.1% ASST($B): 3.9 0.4% BASE($B): 3.5 0.5%	N: 157 6.4% ASST($B): 115.0 12.2% BASE($B): 90.7 12.0%
4. CONSERVATORSHIPS	N: 59 2.4% ASST($B): 27.8 3.0% BASE($B): 19.7 2.6%			

Note: (1) Finnacial data: 6/30/92; Supervisory info: 10/31/92; (2) some adjustment of OAKARS is made.

B. Private Reinsurance

Under section 322 of the FDIC Improvement Act, the FDIC is required to conduct a demonstration project exploring the feasibility of establishing a private reinsurance program. As part of the demonstration project, the FDIC is authorized to engage in actual reinsurance transactions. In addition, in establishing the new risk-based assessment system, the FDIC is authorized by section 302(a) of the FDIC Improvement Act to obtain private reinsurance for a portion of its loss with respect to individual institutions, and to base the institution's assessment on the cost of reinsurance.

If the FDIC develops a satisfactory private reinsurance demonstration project, it will need to decide whether to take the premiums charged by the private reinsurers into account in making assessment risk classification assignments to the institutions involved. To assist it in this matter, the Board requests comment as to whether the insurance premiums charged by the private reinsurers should influence the FDIC's assessment risk classification assignments and, if so, in what manner.

C. Experience Factors

At present, section 7(b) of the Federal Deposit Insurance Act provides for the use of "experience factors" in calculating additions to and deductions from an institution's deposit liabilities for the purpose of determining the institution's assessment base. Under section 7(b), if the institution's records do not show the actual amount of unposted credits and debits to deposits, the institution may estimate such amounts by means of experience factors, as prescribed by the FDIC by regulation.

Under section 302 of the FDIC Improvement Act, by January 1, 1994, existing section 7(b) will be superseded by the new section 7(b) set forth in section 302(a) of the FDIC Improvement Act. The new section 7(b) does not expressly provide for experience factors.

The FDIC is considering amending its assessment regulation to eliminate the use of experience factors. The process for use of the factors is complicated, and may be unnecessary. Today, automated accounting systems readily permit institutions to maintain the actual records needed for calculating the assessment base.

Moreover, the new section 7(b)(5) provides that insured depository institutions must maintain all records the FDCIC may require for verifying the correctness of the institution's assessments. Because experience factors are used for estimating unposted credits and debits in the absence of actual records, their continued use may be inconsistent with this statutory provision.

Accordingly, the Board requests comments as to whether the assessment regulation should be amended to eliminate experience factors. In particular, comment is sought regarding the impact of such an amendment on institutions currently applying the factors and on the significance of the amendment for newly insured institutions.

D. Ratcheting

One means by which the FDIC could encourage weaker institutions to improve their condition would be to increase their insurance rates over time for as long as they remain in a troubled condition. The possibility of incorporating annual or semiannual incremental increases, or "ratcheting", of assessment rates for high-risk institutions that do not improve their condition was addressed in the Board's rulemaking proceeding on the transitional system. In general, those commenting on the issue were not in favor of ratcheting.

The Board is interested in revisiting this issue on the basis of experience with the transitional system. Thus, the Board again seeks comment on ratcheting. In particular, comment is invited as to the advisability of ratcheting upward, by one or two basis points every six or twelve months, the assessment rates paid by the highest-risk institutions.

E. Consolidated Risk Measurement for Bank Holding Companies

During the rulemaking proceeding on the transitional system, several commenters raised the issue of application of a single risk-based assessment rate to all banks within a multi-bank holding company, based on consolidated holding company data. In raising this issue, some commenters cited the cross-guarantee provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. 101–73, 101 Stat. 183), arguing that because of these provisions, the holding company is the most appropriate unit of analysis for measuring the FDIC's insurance risk exposure.

While this consolidated-rate approach has certain appealing features, it is inconsistent with the FDIC's traditional mission of insuring and supervising individual institutions. Moreover, the Board has concerns about the practical effect of applying a lower assessment rate based on a holding company's obligation rather than on its actual performance. If the holding company truly has the ability to inject capital into an insured subsidiary, it can, by doing so, reduce the risk posed by the subsidiary to its deposit insurance fund. For a subsidiary that is not already in the lowest-risk assessment classification, the holding company can thereby reduce the assessment rate paid by the subsidiary under the proposed risked-based system.

For these reasons, the Board does not propose to apply a single assessment rate to all insured institutions within the same holding company. However, the Board does invite further comment on this issue.

F. Separate Systems for Large and Small Institutions

Section 302(a) of the FDIC Improvement Act authorizes the FDIC to establish separate risk-based assessment systems for large and small institutions. The Board has not proposed to do so. It is not clear to the Board why two institutions with the same capital ratios and the same supervisory evaluations should pay potentially different premium rates solely because of their respective sizes. However, the Board invites persons wishing to do so to comment on this matter.

G. Operating Efficiencies

The transitional assessment regulation provides for a notice to be sent by the FDIC to each institution informing the institution of its assessment risk classification for the upcoming semiannual period. The notice is to be provided by the FDIC by the first day of the month preceding that semiannual period.

At present, the FDIC provides certified statement forms to all institutions at approximately the same time it provides the assessment risk classification notice. However, due to the newness of the transitional system, the notice is sent earlier, so that institutions can know their actual rate as early as possible for planning purposes.

It is envisioned that the FDIC and its insured institutions gain experience with the new assessment processes, there will be operating efficiencies to be gained by such refinements as combining the rate notice and the certified statement form in a single mailing. There may also be other procedural changes that can be made to the process to facilitate the various elements. The Board seeks comment on a consolidated mailing for the rate notice and the certified statement forms, as well as on other opportunities to improve the operational process.

V. Assessment Base

Under section 7 of the Federal Deposit Insurance Act, the amount of the assessment paid by an institution is based on the institution's "average assessment base." Section 7(b) defines the assessment base in terms of the institution's domestic deposit liabilities, as adjusted by certain specified additions and substractions.

When the new risk-based system is implemented, the provisions of section 7(b) governing the assessment base will be superseded by a new section 7(b) that does not include reference to an assessment base. This result was intended by Congress "[t]o ensure that legal vestiges of the current deposit insurance system do not unnecessarily constrain the FDIC's discretion" in designing the new risk-based system.[5]

At present, the FDIC's assessment regulation reflects the assessment base currently defined in section 7(b). If these regulatory provisions are not amended, the assessment base will remain for purposes of the new risk-based system just as it is today.

There are arguments both for expanding and contracting the assessment base from its current definition. On the one hand, small institutions argue that large institutions enjoy an unfair advantage because of a "too big to fail" policy. According to the argument, this policy allows large institutions to acquire foreign deposits without bearing the insurance costs they should incur, causing small institutions to bear a disproportionate share of the assessment burden. It is further argued that, since the "too big to fail" policy also effectively protects uninsured deposits held in large institutions, eliminating the assessment on uninsured domestic deposits would unfairly increase small institutions' share of the assessment burden even more.

On the other hand, it can be argued that only insured deposits should be assessed. Under section 141 of the FDIC Improvement Act, when the systemic risk exception to the generally applicable "least cost" test is applied, an "emergency special assessment" is to be levied in order to cover the cost to the affected insurance fund of protecting uninsured deposits. The special assessment is applied to a broad base consisting of each member's average total assets minus the sum of its average tangible equity and subordinated debt. In other instances, when the least-cost test does apply, the manner of resolution—whether or not uninsured deposits are protected—is to be the one that costs the deposit insurance fund the least (a result which in theory should benefit all member institutions).[6]

One thing that is clear is that changing the definition of the assessment base (or broadening the interpretation of the term "deposit" for purposes of calculating the base) could result in a substantial redistribution of the assessment burden among institutions of various sizes. If such redistribution were to occur at the beginning of the proposed new assessment system, it would complicate the transition to the risk-based structure and, further, would come on top of the introduction of other complex statutory programs, such as prompt corrective action. Furthermore, a number of institutions appear to be slowly recovering from the effects of credit quality problems.

The Board believes that further study is required before determining whether, or in what way, the assessment base should be redefined. Accordingly, for this rulemaking, the Board proposes no change to the existing provisions in the assessment regulation governing the assessment base.

VI. Paperwork Reduction Act

No new collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in the rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply to a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof. *Id.* at 601(2). Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis (*id.* at 603 & 604) are not applicable here.

In any event, the assessment obligations that would result from the proposal would be determined by an institution's deposit base and the risk posed to the FDIC. The first element as a matter of course fulfills the primary purpose of the Regulatory Flexibility Act, which is to make sure that agencies' rules do not impose disproportionate burdens on small businesses.

The second element—the risk posed to the deposit insurance fund of which the institution is a member—is clearly one intended by Congress, as evidenced by the mandate in the FDIC Improvement Act of 1991 for implementation of a risk-based assessment system.

Accordingly, the Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Financing Corporation, Savings associations.

For the reasons stated above, the Board proposes to amend 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–19.

2. Section 327.3 is amended by revising paragraph (c); by redesignating paragraphs (d) through (h) as paragraphs (e) through (i), respectively; by adding a new paragraph (d); by revising newly designated paragraphs (e)(1) introductory text, (e)(1)(i) introductory text, (e)(1)(i)(A), (e)(1)(i)(B)(*2*) introductory text, (e)(1)(i)(B)(*2*)(*ii*) introductory text, (e)(1)(ii) heading and introductory text, (e)(2), and (g) to read as follows:

§ 327.3 Payment of semiannual assessments.

* * * * *

(c) *Amount.* Except as provided in paragraph (d) of this section, the semiannual assessment to be paid by each insured depository institution for the current semiannual period shall be computed by multiplying the institution's average assessment base for the prior semiannual period by one-half the annual assessment rate applicable to such institution.

(d) *Lifeline accounts.* The portion of an institution's average assessment base that is attributable to deposits in lifeline accounts pursuant to the Bank Enterprise Act, 12 U.S.C. 1834, will be assessed at such rate as may be established by the Corporation pursuant to 12 U.S.C. 1834 and section 7(b)(2)(H) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1817(b)(2)(H).

(e) *Annual assessment rate*—(1) *Assessment risk classification.* For the purpose of determining the annual assessment rate for BIF members under

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[5] S. Rep. No. 102–167, 102d Cong., 1st Sess. 57 (1991).

[6] Moreover, section 141 provides that, after December 31, 1994, the FDIC may take no action that would increase losses to BIF or SAIF by protecting uninsured deposits or creditors other than depositors.

§ 327.13(c) and the annual assessment rate for SAIF members under § 327.23(d), each insured institution will be assigned as "assessment risk classification". By the first day of the month preceding each semiannual period, each institution will be provided notice of its assessment risk classification for that period. Each institution's assessment risk classification, which will be composed of a group and a subgroup assignment, will be based on the following capital and supervisory factors:

(i) *Capital factors.* Institutions will be assigned to one of the following three capital groups on the basis of data reported in the institution's Report of Income and Condition, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report containing the necessary capital data, for the report date that is closest to the last day of the seventh month preceding the current semiannual period.

(A) *Well capitalized.* For assessment risk classification purposes, the short-form designation for this group is "1".

(*1*) Except as provided in paragraph (e)(1)(i)(A)(*2*) of this section, this group consists of institutions satisfying each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 percent or greater. New insured depository institutions coming into existence after the report date specified in paragraph (e)(1)(i) of this section will be included in this group for the first semiannual period for which they are required to pay assessments.

(*2*) For purposes of assessment risk classification, an insured branch of a foreign bank shall be deemed to be "well capitalized" if the insured branch maintains the pledge of assets required under 12 CFR 346.19, and maintains the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (e)(1)(i) of this section.

(B) * * *

(*2*) For purposes of assessment risk classification, an insured branch of a foreign bank shall be deemed to be "adequately capitalized" if the insured branch:

* * * * *

(*ii*) Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (e)(1)(i) of this section; and

* * * * *

(ii) *Supervisory risk factors.* Within its capital group, each institution will be assigned to one of three subgroups based on the Corporation's consideration of supervisory evaluations provided by the institution's primary federal regulator. The supervisory evaluations include the results of examination findings by the primary federal regulator, as well as other information the primary federal regulator determines to be relevant. In addition, the Corporation will take into consideration such other information (such as state examination findings, if appropriate) as it determines to be relevant to the institution's financial condition and the risk posed to the BIF and SAIF. The three subgroups are:

* * * * *

(2) *Payment of assessment at rate assigned.* Institutions shall make timely payment of assessments based on the assessment risk classification assigned in the notice provided to the institution pursuant to paragraph (e)(1) of this section. Timely payment is required notwithstanding any request for review filed pursuant to paragraph (g) of this section. Any institution to which notice of its assessment risk classification for the current semiannual period is not provided by the first day of the period shall preliminarily compute its assessment based on the rate applicable to the classification designated "2A" in the rate schedule set forth in § 327.13(c)(2) if the institution is a BIF member or in § 327.23(d)(2) if the institution is a SAIF member. If such institution is subsequently assigned for that period an assessment risk classification other than that designated as "2A", or if the classification assigned to an institution in the notice provided under paragraph (e)(1) of this section is subsequently changed, any excess assessment timely paid by the institution will promptly be refunded or credited by the Corporation, with interest, and any additional assessment owed shall promptly be paid by the institution, with interest. Interest payable under this paragraph shall be at the rate provided for in § 327.7(b).

* * * * *

(g) *Requests for review.* An institution may submit a written request for review of its assessment risk classification. Any such request must be submitted within 30 days of the date of the assessment risk classification notice provided by the Corporation pursuant to paragraph (e)(1) of this section. The request shall be submitted to the Corporation's Director of the Division of Supervision in Washington, D.C., and shall include documentation sufficient to support the reclassification sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for the additional information. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the Director of the Division of Supervision (or his or her designee) shall promptly notify the institution in writing of the FDIC's determination of whether reclassification is warranted. Notice of the procedures applicable to reviews will be included with the assessment risk classification notice to be provided pursuant to paragraph (e)(1) of this section.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 15th day of December, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-31478 Filed 12-30-92; 8:45 am]

BILLING CODE 6714-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Fixed Size Standard Levels

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to streamline its size standards by reducing the number of fixed size standard levels to nine. This will be achieved by retaining the five existing employee-based levels and establishing four new receipts-based levels. SBA believes that the current system of thirty size standard levels has led to confusion and has created a needless complication of the size standards. SBA is of the opinion that adopting a limited number of fixed size standard levels, each representing significantly different firm sizes, would make it easier for a business to know which size standard applies to it. Furthermore, as a part of the change, an adjustment for inflation is applied to the streamlined receipts-based size standards which will, in effect, restore eligibility to firms that

have lost their status solely because of inflation.

DATES: Comments must be submitted on or before March 1, 1993.

ADDRESSES: SEND COMMENTS TO: Robert N. Ray, Acting Director, Size Standards Staff, 409 3rd Street, SW., suite 8150, U.S. Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ajoy K. Sinha, Size Standards Staff, (202) 205–6618.

SUPPLEMENTARY INFORMATION: This notice proposes to streamline SBA's size standards by reducing the number of fixed size standard levels to nine. This will be achieved by retaining the five existing employee-based levels and establishing four new receipts-based levels. SBA believes that the current system of thirty size standard levels has led to confusion and has created a needless complication of the size standards. SBA is of the opinion that adopting a limited number of fixed size standard levels, each representing significantly different firm sizes would make it easier for a business to know which size standard applies to it. The nine fixed size standard levels are as follows:

Nine Fixed Size Standard Levels

Proposed New Standards

$5.0 million in annual receipts.
$10.0 million in annual receipts.
$18.0 million in annual receipts.
$24.0 million in annual receipts.

Existing Standards To Be Retained

100 employees.
500 employees.
750 employees.
1000 employees.
1500 employees.

As part of SBA's simplification of the numerical size standards, adjustments have been made to the receipts-based size standard levels proposed at this time to account for the effects of inflation since March 12, 1984, the time of the last general inflationary adjustment to receipts-based size standards (see 49 CFR part 5024).

In determining the rate of inflation, SBA has utilized the Gross Domestic Product (GDP) Implicit Price Deflator calculated and published by the U.S. Department of Commerce, which is the broadest single measure of inflation. It measures price changes in the total national output of goods and services in terms of the expenditures by which those goods and services were acquired. These expenditures cover personal consumption, business investment, and government purchases.

The methodology utilized in determining a new level of size standard for an industry is essentially the same as was used for inflation adjustments in 1975 and 1984, and is as follows:

1. Determine the base period used to establish the current size standard;
2. Determine the GDP deflator from the end of that base period to the most recent point in time for which the GDP deflator has been published; and
3. Increase the existing size standard by the determined percentage.

This inflation adjustment is based on the last index value used for the 1984 inflation adjustment and the latest available index value. The 1984 adjustment accounted for inflation up to the 3rd quarter of 1982, the latest available index at the time of the proposed rule. For purposes of this rule, the 3rd quarter of 1982 is the base period from which SBA calculated the amount of inflation that has occurred since the last adjustment. The U.S. Department of Commerce's latest data show index values of 84.3 for the 3rd quarter of 1982 and 120.6 for the 2nd quarter of 1992. This change records inflation of 43.1 percent for the time between these two periods.

In order to achieve the twin goals of adjusting for inflation and streamlining the SBA size standards, a relatively small number of industries would receive an inflation adjustment that is either slightly larger or smaller than the 43.1 percent inflator. Furthermore, in almost all of these exceptional cases, there would be only a slight difference between the proposed receipt-based size standard level and a fully adjusted size standard. Finally, in no industry would a firm currently defined as small business lose its status as an eligible small business for SBA programs as a result of this decision.

The industries receiving other than a full 43.1 percent inflation adjustment, listed by SIC code (see attached table for industry title), are as follows:

More Than Full Adjustment—SIC codes 0211, 0912, 0913, 0919, 0921, 0971, 4724, 4961, 5271, 5331, 5521, 5812 (part), 5983, 6515 (part), 6531, 7216, 7217, 7381, 7382.

Less Than Full Adjustment—SIC codes 4841, 4899, 5311, 5411, 5511, 5541, 5611, 5621, 5651, 5661, 5722, 5731, 5734, 7349, 7812, 7819, 7822, 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, 7379, 8744 (part), 8721.

Finally, it must be noted that the size standards for certain industries have been either established by statute or prohibited by statute from change until after September 30, 1996. The size standards for these industries will remain at their current levels. Title VII of Public Law 100–656 established the "Small Business Competitiveness Demonstration Program" to test the competitiveness of small business on Federal procurements. That program prohibits a change in size standards before September 30, 1996 for the Construction industries (SIC codes 1500–1799); the Engineering, Architecture, Surveying and Mapmaking industries (SIC codes 8711, 8712, 8713, and part of SIC code 7389); and the Refuse Systems and Related Services industries (SIC code 4953 and part of SIC code 4212). Also, Public Law 99–272 established the size standard for both Agricultural Production—Crops, (SIC codes 0111–0191); and Livestock and Animal Specialties, (SIC codes 0212–0291, except SIC codes 0211 and 0252) at $500,000.

SBA specifically invites comment on the appropriateness of these fixed size standards levels or on alternative size standards (either higher or lower). SBA is willing to consider industry data and other information prior to making a final decision on a size standard. Comments suggesting other standards should address the questions of:

- The interaction of these size standards with SBA's programs;
- The relative levels of participation at different size standards;
- The effect of these proposed size standards or other alternative size standards on business firms within these industries; and
- The prospect of significant new entrants into these industries in response to this program.

Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612 and 12778, and the Paperwork Reduction Act

General

SBA considers that this proposed rule will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*). In addition, this proposed rule constitutes a major rule for the purpose of Executive Order 12291. Immediately below SBA has set forth a summary regulatory impact analysis and an initial regulatory eligibility analysis of this proposed rule.

(1) Description of Entities to Which the Rule Applies

For purposes of procurement assistance, including the programs authorized by sections 8(a) and 15(a) of the Small Business Act, about 10,400 firms would gain small business eligibility pursuant to the streamlining of receipt-based size standards and inflation adjustments proposed by this rule. Many of these concerns probably had small business status in 1984, when the last comprehensive revision of size standards was issued by SBA, but since have lost eligibility because of general price increases. The current changes, in fact, operate roughly as adjustments for price changes (inflation) since that date but also streamline the size standards table. Over 9,000 of the firms gaining eligibility operate in the services sector. Others are services within the agricultural or mining sectors, or are in transportation. These concerns account for about $34 billion in annual sales, but this figure is less than 5 percent of the total sales in their respective industries.

For purposes of financial assistance, these size standard changes would not have a significant impact because the alternative size standard criterion for its Business Loan (7(a)) program would, under an interim final rule published elsewhere in this issue of the Federal Register, allow virtually all firms that might be affected under this rule to qualify under the net income and net worth tests of the other rule.

The proposed size standards would not impose a regulatory burden because they do not regulate or control business behavior.

(2) Description of Potential Benefits of the Rule

Under this proposed rule for SBA's procurement programs, there are no easily quantifiable benefits. However, the additional competition may result in a lower price to the Government within set-aside sales, but SBA is not able to quantify this benefit.

(3) Description of Potential Costs of the Rule

The changes in size standards as they impact on Government procurement should not add any element of cost to the Government and, in fact, as described above may reduce the cost to the procuring Federal agency. The competitive effects of size standards revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovation, mergers, and foreign trade. The change to size standards is not anticipated to have any appreciable effect on any of these factors.

(4) Description of the Potential Net Benefits from the Rule

From the above discussion, SBA believes that, because the potential costs of this interim rule are minimal, the potential net benefits would approach fairly closely the potential benefits. The impact of the new size standard will appear almost exclusively in the Federal procurement area.

(5) Description of Reasons Why This Action is Being Taken and Objectives of Rule

SBA has provided above a statement of the reasons why the new size standards are proposed and a statement of the reasons for and objectives of this proposal.

(6) Legal Basis for Proposed Rule

The legal basis for the proposal is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

(7) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this proposed rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to Proposed Rule

This proposed rule will establish the most appropriate individual size standard by which to define those small businesses that are eligible for SBA's assistance programs. There are no significant alternatives to defining a small business.

SBA certifies that this proposed rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. SBA further certifies that this proposed rule will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

§ 121.601 [Amended]

2. Section 121.601 is amended by revising the heading to the table of "Size Standards by SIC Industry" and Division A, B, E, G, H, and I to read as follows:

SIZE STANDARDS BY SIC INDUSTRY

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts.		
DIVISION A—AGRICULTURE		
Major Group 01—Agricultural Production—Crops		
0111	Wheat	[1]$0.5
0112	Rice	0.5
0115	Corn	0.5
0116	Soybeans	0.5
0119	Cash Grains, N.E.C.	0.5
0131	Cotton	0.5
0132	Tobacco	0.5
0133	Sugarcane and Sugar Beets	0.5
0134	Irish Potatoes	0.5
0139	Field Crops, Except Cash Grains, N.E.C.	0.5

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
0161	Vegetables and Melons	0.5
0171	Berry Crops	0.5
0172	Grapes	0.5
0173	Tree Nuts	0.5
0174	Citrus Fruits	0.5
0175	Deciduous Tree Fruits	0.5
0179	Fruits and Tree Nuts, N.E.C.	0.5
0181	Ornamental Floriculture Nursery Products	0.5
0182	Food Crops Grown Under Cover	0.5
0191	General Farms, Primarily Crop	0.5

Major Group 02—Livestock and Animal Specialties

0211	Beef Cattle Feedlots (Custom)	5.0
0212	Beef Cattle, Except Feedlots	0.5
0213	Hogs	0.5
0214	Sheep and Goats	0.5
0219	General Livestock, Except Dairy and Poultry	0.5
0241	Dairy Farms	0.5
0251	Broiler, Fryer, and Roaster Chickens	0.5
0252	Chicken Eggs	10.0
0253	Turkeys and Turkey Eggs	0.5
0254	Poultry Hatcheries	0.5
0259	Poultry and Eggs, N.E.C.	0.5
0271	Fur-Bearing Animals and Rabbits	0.5
0272	Horses and Other Equines	0.5
0273	Animal Aquaculture	0.5
0279	Animal Specialties, N.E.C.	0.5
0291	General Farms, Primarily Livestock and Animal Specialties	$0.5

Major Group 07—Agricultural Services

0711	Soil Preparation Services	5.0
0721	Crop Planting, Cultivating, and Protecting	5.0
0722	Crop Harvesting, Primarily by Machine	5.0
0723	Crop Preparation Service for Market, Except Cotton Ginning	5.0
0724	Cotton Ginning	5.0
0741	Veterinary Services for Livestock	5.0
0742	Veterinary Services for Animal Specialties	5.0
0751	Livestock Services, Except Veterinary	5.0
0752	Animal Specialty Services, Except Veterinary	5.0
0761	Farm Labor Contractors and Crew Leaders	5.0
0762	Farm Management Services	5.0
0781	Landscape Counselling and Planning	5.0
0782	Lawn and Garden Services	5.0
0783	Ornamental Shrub and Tree Services	5.0

Major Group 08—Forestry

0811	Timber Tracts	5.0
0831	Forest Nurseries and Gathering of Forest Products	5.0
0851	Forestry Services	5.0

Major Group 09—Fishing, Hunting, and Trapping

0912	Finfish	5.0
0913	Shellfish	5.0
0919	Miscellaneous Marine Products	5.0
0921	Fish Hatcheries and Preserves	5.0
0971	Hunting and Trapping, and Game Propagation	5.0

DIVISION B—MINING

Major Group 10—Metal Mining

1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium	500
1081	Metal Mining Services	5.0
1094	Uranium-Radium-Vanadium Ores	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
1099	Miscellaneous Metal Ores, N.E.C.	500
	Major Group 12—Coal Mining	
1221*	Bituminous Coal and Lignite Surface Mining	500
1222*	Bituminous Coal Underground Mining	500
1231*	Anthracite Mining	500
1241*	Coal Mining Services	5.0
	Major Group 13—Oil and Gas Extraction	
1311	Crude Petroleum and Natural Gas	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services	5.0
1389	Oil and Gas Field Services, N.E.C.	5.0
	Major Group 14—Mining and Quarrying of Nonmetallic Minerals, Except Fuels	
1411	Dimension Stone	500
1422	Crushed and Broken Limestone	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel	500
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C.	500
1481	Nonmetallic Minerals Services, Except Fuels	5.0
1499	Miscellaneous Nonmetallic Minerals, Except Fuels	500

* * * * * *

DIVISION E—TRANSPORTATION, COMMUNICATIONS ELECTRIC, GAS, AND SANITARY SERVICES

	Major Group 40—Railroad Transportation	
4011	Railroads, Line-Haul Operating	1,500
4013	Railroad Switching and Terminal Establishments	500
	Major Group 41—Local and Suburban Transit and Interurban Highway Passenger Transportation	
4111	Local and Suburban Transit	5.0
4119	Local Passenger Transportation, N.E.C.	5.0
4121	Taxicabs	5.0
4131	Intercity and Rural Bus Transportation	5.0
4141	Local Bus Charter Service	5.0
4142	Bus Charter Service, Except Local	5.0
4151	School Buses	5.0
4173*	Terminal and Service Facilities for Motor Vehicle Passenger Transportation	5.0
	Major Group 42—Motor Freight Transportation and Warehousing	
4212	Local Trucking Without Storage	[7]18.0
4213	Trucking, Except Local	18.0
4214	Local Trucking With Storage	18.0
4215*	Courier Services, Except by Air	18.0
4221	Farm Product Warehousing and Storage	18.0
4222	Refrigerated Warehousing and Storage	18.0
4225	General Warehousing and Storage	18.0
4226	Special Warehousing and Storage, N.E.C.	18.0
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	5.0
	Major Group 44—Water Transportation[8]	
4412	Deep Sea Foreign Transportation of Freight	500
4424*	Deep Sea Domestic Transportation of Freight	500
4432*	Freight Transportation on the Great Lakes—St. Lawrence Seaway	500
4449*	Water Transportation of Freight, N.E.C.	500
4481*	Deep Sea Transportation of Passengers, Except by Ferry	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
4482*	Ferries	500
4489*	Water Transportation of Passengers, N.E.C.	500
4491*	Marine Cargo Handling	18.0
4492*	Towing and Tugboat Services	5.0
4493*	Marinas	5.0
4499*	Water Transportation Services, N.E.C.	5.0
	Major Group 45—Transportation by Air[8]	
4512*	Air Transportation, Scheduled	[9]1,500
4513*	Air Courier Services	[9]1,500
4522*	Air Transportation, Nonscheduled	[9]1,500
4581*	Airports, Flying Fields, and Airport Terminal Services	5.0
	Major Group 46—Pipelines, Except Natural Gas	
4612	Crude Petroleum Pipelines	1,500
4613	Refined Petroleum Pipelines	1,500
4619	Pipelines, N.E.C.	24.0
	Major Group 47—Transportation Services:	
4724*	Travel Agencies	[10]5.0
4725*	Tour Operators	5.0
4729*	Arrangement of Passenger Transportation, N.E.C.	5.0
4731*	Arrangement of Transportation of Freight and Cargo	18.0
4741*	Rental of Railroad Cars	5.0
4783	Packing and Crating	18.0
4785*	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation	5.0
4789	Transportation Services, N.E.C.	5.0
	Major Group 48—Communications	
4812*	Radiotelephone Communications	1,500
4813*	Telephone Communications, Except Radiotelephone	1,500
4822	Telegraph and Other Message Communications	5.0
4832	Radio Broadcasting Stations	5.0
4833	Television Broadcasting Stations	10.0
4841*	Cable and Other Pay Television Services	10.0
4899	Communications Services, N.E.C.	10.0
	Major Group 49—Electric, Gas, and Sanitary Services	
4911	Electric Services	4 million megawatt hrs.
4922	Natural Gas Transmission	5.0
4923	Gas transmission and Distribution	5.0
4924	Natural Gas Distribution	500
4925	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution	5.0
4931	Electric and Other Services Combined	5.0
4932	Gas and Other Services Combined	5.0
4939	Combination Utilities, N.E.C.	5.0
4941	Water Supply	5.0
4952	Sewerage Systems	5.0
4953	Refuse Systems	[11]6.0
4959	Sanitary Services, N.E.C.	5.0
4961	Steam and Air-Conditioning Supply	10.0
4971	Irrigation Systems	5.0

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DIVISION G—RETAIL TRADE

(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 52—Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	
5211	Lumber and Other Building Materials Dealers	5.0
5231	Paint, Glass, and Wallpaper Stores	5.0
5251	Hardware Stores	5.0
5261	Retail Nurseries, Lawn and Garden Supply Stores	5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
5271	Mobile Home Dealers	10.0
	Major Group 53—General Merchandise Stores	
5311	Department Stores	18.0
5331	Variety Stores	10.0
5399	Miscellaneous General Merchandise Stores	5.0
	Major Group 54—Food Stores	
5411	Grocery Stores	18.0
5421*	Meat and Fish (Seafood) Markets, Including Freezer and Provisioners	5.0
5431	Fruit and Vegetable Markets	5.0
5441	Candy, Nut, and Confectionery Stores	5.0
5451	Dairy Products Stores	5.0
5461*	Retail Bakeries	5.0
5499	Miscellaneous Food Stores	5.0
	Major Group 55—Automotive Dealers and Gasoline Service Stations	
5511	Motor Vehicle Dealers (New and Used)	18.0
5521	Motor Vehicle Dealers (Used Only)	18.0
5531	Auto and Home Supply Stores	5.0
5541	Gasoline Service Stations	5.0
5551	Boat Dealers	5.0
5561	Recreational Vehicle Dealers	5.0
5571	Motorcycle Dealers	5.0
5599	Automotive Dealers, N.E.C.[12]	5.0
	Major Group 56—Apparel and Accessory Stores	
5611	Men's and Boys' Clothing and Accessory Stores	5.0
5621	Women's Clothing Stores	5.0
5632*	Women's Accessory and Specialty Stores	5.0
5641	Children's and Infants' Wear Stores	5.0
5651	Family Clothing Stores	5.0
5661	Shoe Stores	5.0
5699	Miscellaneous Apparel and Accessory Stores	5.0
	Major Group 57—Home Furniture, Furnishings, and Equipment Stores	
5712	Furniture Stores	5.0
5713	Floor Covering Stores	5.0
5714	Drapery, Curtain, and Upholstery Stores	5.0
5719	Miscellaneous Homefurnishings Stores	5.0
5722	Household Appliance Stores	5.0
5731*	Radio, Television, and Consumer Electronics Stores	5.0
5734*	Computer and Computer Software Stores	5.0
5735*	Record and Prerecorded Tape Stores	5.0
5736*	Musical and Instrument Stores	5.0
	Major Group 58—Eating and Drinking Places	
5812	Eating Places, Except Food Service, Institutional	5.0
5812	Food Service, Institutional	18.0
5813	Drinking Places (Alcoholic Beverages)	5.0
	Major Group 59—Miscellaneous Retail	
5912	Drug Stores and Proprietary Stores	5.0
5921	Liquor Stores	5.0
5932*	Used Merchandise Stores	5.0
5941	Sporting Goods Stores and Bicycle Shops	5.0
5942	Book Stores	5.0
5943	Stationery Stores	5.0
5944	Jewelry Stores	5.0
5945	Hobby, Toy, and Game Shops	5.0
5946	Camera and Photographic Supply Stores	5.0
5947	Gift, Novelty, and Souvenir Shops	5.0
5948	Luggage and Leather Goods Stores	5.0
5949	Sewing, Needlework, and Piece Goods Stores	5.0
5961	Catalog and Mail-Order Houses	18.0
5962	Automatic Merchandising Machine Operators	5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
5963	Direct Selling Establishments	5.0
5983	Fuel Oil Dealers	10.0
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers	5.0
5989*	Fuel Dealers, N.E.C.	5.0
5992	Florists	5.0
5993	Tobacco Stores and Stands	5.0
5994	News Dealers and Newsstand	5.0
5995*	Optical Goods Stores	5.0
5999	Miscellaneous Retail Stores, N.E.C.	5.0

DIVISION H—FINANCE, INSURANCE, AND REAL ESTATE[13]

Major 60—Depository Institutions

6021*	National Commercial Banks	[14]100
6022	State Commercial Banks	[14]100
6029*	Commercial Banks, N.E.C.	[14]100
6035*	Savings Institutions, Federally Chartered	[14]100
6036*	Savings Institutions, Not Federally Chartered	[14]100
6061	Credit Unions, Federally Chartered	[14]100
6062	Credit Unions, Not Federally Chartered	[14]100
6081	Branches and Agencies of Foreign Banks	[14]100
6082	Foreign Trade and International Banks	[14]100
6091	Nondeposit Trust Facilities	5.0
6099	Functions Related to Depositor Banking, N.E.C.	5.0

Major Group 61—Nondepository Institution

6141	Personal Credit Institutions	5.0
6153	Short-Term Business Credit Institutions, Except Agriculture	5.0
6159	Miscellaneous Business Credit Institutions	5.0
6162	Mortgage Bankers and Loan Correspondents	5.0
6163	Loan Brokers	5.0

Major Group 62—Security and Commodity Brokers, Dealers, Exchanges and Services

6211	Security Brokers, Dealers and Flotation Companies	5.0
6221	Commodity Contracts Brokers and Dealers	5.0
6231	Security and Commodity Exchanges	5.0
6282	Investment Advice	5.0
6289	Services Allied With the Exchange of Securities or Commodities, N.E.C.	5.0

Major Group 63—Insurance Carriers

6311	Life Insurance	45.0
6321	Accident and Health Insurance	5.0
6324	Hospital and Medical Service Plans	5.0
6331	Fire, Marine, and Casualty Insurance	1,500
6351	Surety Insurance	5.0
6361	Title Insurance	5.0
6371	Pension, Health and Welfare Funds	5.0
6399	Insurance Carriers, N.E.C.	5.0

Major Group 64—Insurance Agents, Brokers, and Service

6411	Insurance Agents, Brokers, and Service	5.0

Major Group 65—Real Estate

6512	Operators of Nonresidential Buildings	5.0
6513	Operators of Apartment Buildings	5.0
6514	Operators of Dwellings Other Than Apartment Buildings	5.0
6515	Operators of Residential Mobile Home Sites	5.0
	Leasing of Building Space to Federal Government by Owners	[15]18.0
6517	Lessors of Railroad Property	5.0
6519	Lessors of Real Property, N.E.C.	5.0
6531	Real Estate Agents and Managers	[10]5.0
6541	Title Abstract Offices	5.0
6552	Land Subdividers and Developers, Except Cemeteries	5.0
6353	Cemetery Subdividers and Developers	5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 67—Holding and Other Investment Offices	
6712	Offices of Bank Holding Companies	5.0
6719	Offices of Holding Companies, N.E.C.	5.0
6722	Management Investment Offices, Open-End	5.0
6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment offices	5.0
6732	Educational, Religious, and Charitable Trusts	5.0
6733	Trusts, Except Educational, Religious, and Charitable	5.0
6792	Oil Royalty Traders	5.0
6794	Patent Owners and Lessors	5.0
6798	Real Estate Investment Trusts	5.0
6799	Investors, N.E.C.	5.0
	DIVISION I—SERVICES[16]	
	Major Group 70—Hotels, Rooming Houses, Camps, and Other Lodging Places	
7011	Hotels and Motels	5.0
7021	Rooming and Boarding Houses	5.0
7032	Sporting and Recreational Camps	5.0
7033	Recreational Vehicle Parks and Campsites	5.0
7041	Organization Hotels and Lodging Houses, on Membership Basis	5.0
	Major Group 72—Personal Services	
7211	Power Laundries, Family and Commercial	10.0
7212	Garment Pressing, and Agents for Laundries and Drycleaners	5.0
7213	Linen Supply	10.0
7215	Coin-Operated Laundries and Drycleaning	5.0
7216	Drycleaning Plants, Except Rug Cleaning	5.0
7217	Carpet and Upholstery Cleaning	5.0
7218	Industrial Launderers	10.0
7219	Laundry and Garment Services, N.E.C.	5.0
7221	Photographic Studios, Portrait	5.0
7231	Beauty Shops	5.0
7241	Barber Shops	5.0
7251	Shoe Repair Shops and Shoeshine Parlors	5.0
7261	Funeral Service and Crematories	5.0
7291*	Tax Return Preparation Services	5.0
7299	Miscellaneous Personal Services, N.E.C.	5.0
	Major Group 73—Business Services	
7311	Advertising Agencies	5.0
7312	Outdoor Advertising Services	5.0
7213	Radio, Television, and Publishers' Advertising Representatives	5.0
7319	Advertising, N.E.C.	5.0
7322*	Adjustment and Collection Services	5.0
7323*	Credit Reporting Services	5.0
7331	Direct Mail Advertising Services	5.0
7334*	Photocopying and Duplicating Services	5.0
7335*	Commercial Photography	5.0
7336*	Commercial Art and Graphic Design	5.0
7338*	Secretarial and Court Reporting Services	5.0
7342	Disinfecting and Pest Control Services	5.0
7349	Building Cleaning and Maintenance Services, N.E.C	10.0
7352*	Medical Equipment Rental and Leasing	5.0
7353*	Heavy Construction Equipment Rental and Leasing	5.0
7359*	Equipment Rental and Leasing, N.E.C.	5.0
7361	Employment Agencies	5.0
7363*	Help Supply Services	5.0
7371*	Computer Programming Services	18.0
7372	Prepackaged Software	18.0
7373*	Computer Integrated Systems Design	18.0
7374	Computer Processing and Data Preparation and Processing Services	18.0
7375*	Information Retrieval Services	18.0
7376*	Computer Facilities Management Services	18.0
7377*	Computer Rental and Leasing	18.0
7378*	Computer Maintenance and Repair	18.0
7379	Computer Related Services, N.E.C.	18.0
7381*	Detective, Guard, and Armored Car Services	10.0
7382*	Security Systems Services	10.0
7383*	News Syndicates	5.0
7384*	Photofinishing Laboratories	5.0

Size Standards by SIC Industry—Continued

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
7389*	Business Services, N.E.C.	5.0
	Major Group 75—Automotive Repair, Services, and Parking	
7513	Truck Rental and Leasing, Without Drivers	18.0
7514*	Passenger Car Rental	18.0
7515*	Passenger Car Leasing	18.0
7519	Utility Trailer and Recreational Vehicle Rental	5.0
7521*	Automobile Parking	5.0
7532*	Top, Body, and Upholstery Repair Shops and Paint Shops	5.0
7533*	Automotive Exhaust System Repair Shops	5.0
7534	Tire Retreading and Repair Shops	10.0
7536*	Automotive Glass Replacement Shops	5.0
7537*	Automotive Transmission Repair Shops	5.0
7538	General Automotive Repair Shops	5.0
7539	Automotive Repair Shops, N.E.C.	5.0
7542	Carwashes	5.0
7549	Automotive Services, Except Repair and Carwashes	5.0
	Major Group 76—Miscellaneous Repair Services	
7622	Radio and Television Repair Shops	5.0
7623	Refrigeration and Air-Conditioning Service and Repair Shops	5.0
7629	Electrical and Electronic Repair Shops, N.E.C.	5.0
7631	Watch, Clock, and Jewelry Repair	5.0
7641	Reupholstery and Furniture Repair	5.0
7692	Welding Repair	5.0
7694	Armature Rewinding Shops	5.0
7699	Repair Shops and Related Services, N.E.C.	[17]5.0
	Major Group 78—Motion Pictures	
7812*	Motion Picture and Video Tape Production	18.0
7819	Services Allied to Motion Picture Production	18.0
7822*	Motion Picture and Video Tape Distribution	18.0
7829	Services Allied to Motion Picture Distribution	5.0
7832	Motion Picture Theaters, Except Drive-In	5.0
7833	Drive-In Motion Picture Threaters	5.0
7841*	Video Tape Rental	5.0
	Major Group 79—Amusement and Recreation Services	
7911	Dance Studios, Schools, and Halls	5.0
7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services	5.0
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups	5.0
7933	Bowling Centers	5.0
7941	Professional Sports Clubs and Promoters	5.0
7991*	Physical Fitness Facilities	5.0
7993	Coin-Operated Amusement Devices	5.0
7996	Amusement Parks	5.0
7997	Membership Sports and Recreation Clubs	5.0
7999	Amusement and Recreation Services, N.E.C.	5.0
	Major Group 80—Health Services	
8011	Offices and Clinics of Doctors of Medicine	5.0
8021	Offices and Clinics of Dentists	5.0
8031	Offices and Clinics of Doctors of Osteopathy	5.0
8041	Offices and Clinics of Chiropractors	5.0
8042	Offices and Clinics of Optometrists	5.0
8043*	Offices and Clinics of Podiatrists	5.0
8049	Offices and Clinics of Health Practitioners, N.E.C.	5.0
8051	Skilled Nursing Care Facilities	5.0
8052*	Intermediate Care Facilities	5.0
8059	Nursing and Personal Care Facilities, N.E.C.	5.0
8062	General Medical and Surgical Hospitals	5.0
8063	Psychiatric Hospitals	5.0
8069	Specialty Hospitals, Except Psychiatric	5.0
8071	Medical Laboratories	5.0
8072	Dental Laboratories	5.0
8082*	Home Health Care Services	5.0
8092*	Kidney Dialysis Centers	5.0
8093*	Specialty Outpatient Facilities, N.E.C.	5.0
8099*	Health and Allied Services, N.E.C.	5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 81—Legal Services	
8111	Legal Services	5.0
	Major Group 82—Educational Services	
8211	Elementary and Secondary Schools	5.0
8221	Colleges, Universities, and Professional Schools	5.0
8222	Junior Colleges and Technical Institutes	5.0
8231	Libraries	5.0
8243	Data Processing Schools	5.0
8244	Business and Secretarial Schools	5.0
8249	Vocational Schools, N.E.C.	5.0
8299	Schools and Educational Services, N.E.C.	5.0
8299	Flight Training Services	18.0
	Major Group 83—Social Services	
8322*	Individual and Family Social Services	5.0
8331	Job Training and Vocational Rehabilitation Services	5.0
8351	Child Day Care Services	5.0
8361	Residential Care	5.0
8399	Social Services, N.E.C.	5.0
	Major Group 84—Museums, Art Galleries, and Botanical and Zoological Gardens	
8412*	Museums and Art Galleries	5.0
8422*	Arboreta and Botanical or Zoological Gardens	5.0
	Major Group 86—Membership Organizations	
8611	Business Associations	5.0
8621	Professional Membership Organizations	5.0
8631	Labor Unions and Similar Labor Organizations	5.0
8641	Civic, Social, and Fraternal Associations	5.0
8651	Political Organizations	5.0
8661	Religious Organizations	5.0
8699	Membership Organizations, N.E.C.	5.0
	Major Group 87—Engineering, Accounting, Research, Management, and Related Services	
8711*	Engineering Services	
	Military and Aerospace Equipment and Military Weapons	13.5
	Marine Engineering and Naval Architecture	9.0
	Other Engineering Services	2.5
8712*	Architectural Services (Other Than Naval)	2.5
8713*	Surveying Services	2.5
8721*	Accounting, Auditing, and Bookkeeping Services	5.0
8731*	Commercial Physical and Biological Research[18]	5.0
	Aircraft	1,500
	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engines and Engine Parts	1,000
	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.	1,000
	Other Commercial Physical and Biological Research	500
8732*	Commercial Economic, Sociological, and Educational Research	5.0
8733*	Noncommercial Research Organizations	5.0
8734*	Testing Laboratories	5.0
8741*	Management Services	5.0
8742*	Management Consulting Services	5.0
8743*	Public Relations Services	5.0
8744*	Facilities Support Management Services[19]	5.0
	Base Maintenance[20]	18.0
8748*	Business Consulting Services, N.E.C.	5.0
	Major Group 89—Services, not Elsewhere Classified	
8999	Services, N.E.C.	5.0

§ 121.601 [Amended].

3. Section 121.601, Standard Industrial Classification Table, footnote 8 is revised to read as follows (and footnotes 10 and 11 remain unchanged):

[8] Offshore Marine Services: The applicable size standard shall be $18.0 million for firms furnishing specific transportation services to a concern engaged in offshore oil and/or natural gas exploration, drilling production, marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site.

4. Section 121.601, Standard Industrial Classification Table, footnote 12 is revised to read as follows (and footnotes 13 and 14 remain unchanged):

[12] SIC code 5599: For retail firms whose principal line of business is the retail sale of aircraft, a $5.0 million size standard shall apply.

5. Section 121.601, Standard Industrial Classification Table, footnote 15 is amended by revising the first sentence to read as follows:

[15] Major Group 65—Leasing of building space to the Federal Government by Owners: For purposes of Government procurement, a size standard of $18.0 million in gross receipts is established for owners of building space that is leased to the Federal Government. The standards for those procurements shall apply to the concern which owns the property and not to those acting as an agent for the owning concern. There is no size standard concerning the agent in a leasing arrangement. * * *

6. Section 121.601, Standard Industrial Classification Table, footnote 16 is revised to read as follows (and footnotes 17, 19 and 20 remain unchanged):

[16] Division I—Services: For all industries not specifically listed in this division, the size standard is $5.0 million.

Dated: December 21, 1992.

Patricia Saiki,

Administrator, U.S. Small Business Administration.

[FR Doc. 92-31629 Filed 12-30-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-17-90]

RIN 1545-A057

Reporting Requirements for Recipients of Points Paid on Residential Mortgages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations setting forth the reporting requirements under section 6050H of the Internal Revenue Code for recipients of points paid on residential mortgages. The proposed regulations implement amendments made to section 6050H by the Omnibus Budget Reconciliation Act of 1989. The proposed regulations affect any taxpayer that, in the course of a trade or business, receives $600 or more of interest, including points, in a calendar year on a residential mortgage.

DATES: Written comments and requests for a public hearing must be received by March 1, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 5228, Washington, DC 20044 (Attn: CC:Corp:T:R (IA-17-90)).

FOR FURTHER INFORMATION CONTACT: James L. Atkinson on (202) 622-4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The required collections of information in this notice of proposed rulemaking are in §§ 1.6050H-1 and 1.6050H-2 and are satisfied by providing the required information on a Form 1098 filed with the Service and on the statement furnished to the payor of record (substitute Form 1098). This information is needed by the Internal Revenue Service to verify deductions claimed by mortgagors. The likely respondents are financial institutions and mortgage brokers.

The burden for filing Form 1098 and the statement to the payor of record (substitute Form 1098) is already reflected in the burden estimates for Form 1098. The following estimates are an approximation of the average time expected to be necessary for a taxpayer to prepare and to retain a written designation agreement under section 1.6050H-2 of the proposed regulations. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require more or less time, depending on their particular circumstances.

The estimated total annual reporting burden is 157,400 hours.

The estimated total annual recordkeeping burden is 62,960 hours.

The estimated average annual burden per respondent/recordkeeper is 35 hours.

The estimated number of respondents/recordkeepers is 6,296.

The estimated annual frequency of responses is 100.

The following estimates are an approximation of the average time expected to be necessary for a taxpayer to obtain and record a signed, written statement representing that the points to be reported on Form 1098 are being paid in connection with the purchase of a principal residence, as provided in section 1.6050H-1(f)(1)(iv) of the proposed regulations. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

The estimated total annual reporting burden is 62,696 hours.

The estimated average annual burden per respondent is 2 hours.

The estimated number of respondents is 31,348.

The estimated annual frequency of responses is 20.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide rules relating to the reporting of points paid on residential mortgages under section 6050H(b)(2) of the Internal Revenue Code of 1986 (the Code). Section 6050H(b)(2) was amended by section 7646 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. No. 101-239, 103 Stat. 2106).

Section 6050H provides that an information return must be made by any person who is engaged in a trade or business and who, in the course of that trade or business, receives from any individual $600 or more of interest on any mortgage in a calendar year. Any person required to make an information return under section 6050H must also furnish a statement to the payor of record on or before January 31 of the year following the calendar year in which the interest was received.

Section 6050H(b)(2) was amended by the Omnibus Budget Reconciliation Act of 1989 to require persons subject to the information reporting requirements of section 6050H to separately state the amount of points and the amount of interest (other than points) received from an individual on a mortgage during a calendar year. Section 6050H(d)(2) requires persons subject to the information reporting requirements to provide to the individual from whom the interest and points were received a statement separately stating the amount of points and the amount of interest (other than points) received on the mortgage during the calendar year.

On April 12, 1988, the Internal Revenue Service issued final regulations (T.D. 8191, 53 FR 12002) regarding the application of section 6050H to amounts received as interest (other than points). These proposed regulations would supplement the existing regulations by providing guidance as to the application of section 6050H to points received from an individual during a calendar year.

Explanation of Provisions

Under the proposed regulations, a person who in the course of a trade or business receives an aggregate of at least $600 in interest, including prepaid interest in the form of points, on a residential mortgage during a calendar year must comply with the information reporting requirements of section 6050H. The Service has received suggestions to apply the $600 threshold separately to points and interest other than points. The proposed regulations follow the plain language of section 6050H, which treats points as one type of interest, and requires information reporting whenever the total interest is $600 or more.

The proposed regulations also provide guidance on the reporting of points paid on a loan incurred for the construction of a principal residence. Under the proposed regulations, a loan incurred for the construction of a principal residence as well as a permanent (i.e., take-out) loan incurred to refinance the construction loan are each considered indebtedness incurred in connection with the purchase of a principal residence. Accordingly, points paid in connection with each loan are to be reported in accordance with section 6050H and the regulations.

In addition, the proposed regulations provide that points paid in connection with a residential mortgage guaranteed, insured, or provided by the Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA) are treated the same as points paid in connection with other residential mortgages for purposes of information reporting under section 6050H.

The Service has determined that for purposes of section 6050H, prepaid interest in the form of points paid to an interest recipient by the seller on behalf of the buyer should be treated as paid to the buyer and then paid directly by the buyer to the interest recipient. Accordingly, the proposed regulations provide that if an interest recipient receives prepaid interest in the form of points from the seller, the amount is deemed paid directly by the buyer for purposes of section 6050H.

If final regulations are issued based on these proposed regulations, the Internal Revenue Service will supersede, obsolete, or modify, as appropriate, any existing revenue rulings, revenue procedures, and notices that conflict with or are superseded by the provisions of the regulations. The Service anticipates that the list of affected guidance will include, but will not necessarily be limited to, Notice 90–70, 1990–2 C.B. 351; Rev. Proc. 92–11, 1992–1 C.B. 662; Rev. Proc. 92–12, 1992–1 C.B. 663; Rev. Proc. 92–12A, 1992–1 C.B. 664; and Rev. Rul. 92–2, 1992–1 C.B. 360; Rev. Rul. 69–188, 1969–1 C.B. 54; Rev. Rul. 67–297, 1967–2 C.B. 87; and Rev. Rul. 57–541, 1957–2 C.B. 319. See § 601.601(d)(2)(ii)(*b*) of this chapter. The Service requests comments concerning other guidance that may be affected by the final regulations.

To the extent the proposed regulations incorporate without substantive change rules already contained in the existing regulations that cover reporting of interest other than points, they are proposed to be effective for mortgage interest received after December 31, 1987. The new rules provided by the proposed regulations are proposed to be effective for prepaid interest in the form of points received after December 31, 1993. For guidance on the application of section 6050H to points received after 1990 and before 1994, see Notice 90–70, Rev. Proc. 92–11, Rev. Proc. 92–12, Rev. Proc. 92–12A, and Rev. Rul. 92–2. Guidance modifying Rev. Proc. 92–12 and Rev. Proc. 92–12A to conform to the treatment of seller-paid points set forth in the proposed regulations will be published in the Internal Revenue Bulletin in the near future.

Special Analyses

It has been determined that these proposed regulations are not major rules as defined in Executive Order 12291 and, therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations as final regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who timely submits written comments on the proposed rules. Notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is James L. Atkinson of the Office of Assistant Chief Counsel, (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.6031–1 through 1.6060–1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * * Sections 1.6050H–1 and 1.6050H–2 are also issued under 26 U.S.C. 6050H.

Par. 2. Section 1.6050H–0 is revised to read as follows:

§ 1.6050H–0 Table of contents.

§ 1.6050H–1 Information reporting of mortgage interest received in a trade or business from an individual.

(a) Information reporting requirement.
(1) Overview.

(2) Reporting requirement.
(3) Optional reporting.
(b) Qualified mortgage.
(1) In general.
(2) Mortgage.
  (i) In general.
  (ii) Transitional rule for certain obligations existing on December 31, 1984.
  (iii) Transitional rule for certain obligations existing on December 31, 1987.
(3) Payor of record.
(4) Lender of record.
(c) Interest recipient.
(1) Trade or business requirement.
(2) Interest received or collected on behalf of another person.
  (i) General rule.
  (ii) Exception.
(3) Interest received in the form of points.
  (i) In general.
  (ii) If designation agreement is in effect.
(4) Governmental unit.
(5) Examples.
(d) Additional rules.
(1) Reporting by foreign person.
(2) Reporting with respect to nonresident alien individual.
  (i) In general.
  (ii) Nonresident alien individual status.
(3) Reporting by cooperative housing corporations.
(e) Amount of interest received on mortgage for calendar year.
(1) In general.
(2) Calendar year.
  (i) In general.
  (ii) De minimis rule.
  (iii) Applicability to points.
(3) Certain interest not received on mortgage.
  (i) Interest received from seller on payor of record's mortgage.
  (ii) Interest received from governmental unit.
(4) Interest calculated under Rule of 78s method of accounting.
(f) Points treated as interest.
(1) General rule.
(2) Limitations.
(3) Special rule.
  (i) Amounts paid directly by payor of record.
  (ii) Examples.
(4) Construction loans.
  (i) In general.
  (ii) Limitation on refinancing of construction loans.
(5) Amounts paid to mortgage brokers.
(6) Effect on deduction of points.
(g) Effective date.
(1) In general.
(2) Points.

§ 1.6050H-2 Time, form, and manner of reporting interest received on qualified mortgage.

(a) Requirement to file return.
(1) Form of return.
(2) Information included on return.
(3) Time and place for filing return.
(4) Use of magnetic media.
(b) Requirement to furnish statement.
(1) In general.
(2) Information included on statement.
(3) Statement furnished pursuant to Federal mortgage program.
(4) Copy of Form 1098 to payor of record.
(5) Furnishing statement with other information reports.
(6) Time and place for furnishing statement.
(c) Notice requirement for use of Rule of 78s method of accounting.
(1) In general.
(2) Time and manner.
(d) Reporting under designation agreement.
(1) In general.
(2) Qualified person.
(3) Designation agreement.
(4) Penalties.
(e) Penalty provisions.
(1) Returns and statements the due date for which (determined without regard for extensions) is after December 31, 1987, and before December 31, 1989.
  (i) Failure to file return or to furnish statement.
  (ii) Failure to furnish TIN.
  (iii) Failure to include correct information.
(2) Returns and statements the due date for which (determined without regard for extensions) is after December 31, 1989.
  (i) Failure to file return or to furnish statement.
  (ii) Failure to furnish TIN.
  (iii) Failure to include correct information.
(f) Requirement to request and to obtain TIN.
(1) In general.
(2) Manner of requesting TIN.
(g) Effective date.
(1) In general.
(2) Points.

Par. 3. Section 1.6050H–1 is amended as follows:

1. Paragraph (a) is revised.
2. Paragraph (b)(4) is added.
3. Paragraph (c)(2) is revised.
4. Paragraph (c)(3) is redesignated as paragraph (c)(5) and Example (5) is added.
5. New paragraph (c)(3) is added.
6. Paragraph (e)(1) is revised.
7. Paragraph (e)(2)(i) is revised.
8. Paragraph (e)(2)(iii) is added.
9. The heading and text for paragraph (f) are added.
10. Paragraph (g) is revised.
11. The added and revised provisions read as follows:

§ 1.6050H–1 Information reporting of mortgage interest received in a trade or business from an individual.

(a) *Information reporting requirement*—(1) *Overview.* The information reporting requirements of section 6050H, this section, and § 1.6050H–2 apply to an interest recipient who receives at least $600 of interest on a qualified mortgage for a calendar year. Paragraph (b) of this section defines qualified mortgage. Paragraph (c) of this section defines interest recipient. Paragraph (d) of this section contains additional rules relating to the reporting requirement for foreign persons, cooperative housing corporations, and nonresident alien individuals. Paragraph (e) of this section contains rules for determining the amount of interest received on a mortgage for a calendar year. Paragraph (f) of this section provides rules for determining when prepaid interest in the form of points is taken into account as interest for purposes of section 6050H, this section, and § 1.6050H–2.

(2) *Reporting requirement.* Except as otherwise provided in this section and § 1.6050H–2, an interest recipient that receives at least $600 of interest on a qualified mortgage for a calendar year must, with respect to that interest—

(i) File an information return with the Internal Revenue Service; and

(ii) Furnish a statement to the payor of record on the mortgage.

(3) *Optional reporting.* An interest recipient may, but is not required to, report its receipt of less than $600 of interest on a qualified mortgage for a calendar year. An interest recipient that chooses, but is not required, to file a return as provided in this section and § 1.6050H–2(a) or to furnish a statement as provided in this section and § 1.6050H–2(b) is subject to the requirements of this section and § 1.6050H–2.

(b) * * *

(4) *Lender of record.* The lender of record is the person who, at the time the loan is made, is named as the lender on the loan documents and whose right to receive payment from the payor of record is secured by the payor of record's principal residence. An intention by the lender of record to sell or otherwise transfer the loan to a third party subsequent to the close of the transaction will not affect the determination of who is the lender of record.

(c) * * *

(2) *Interest received or collected on behalf of another person*—(i) *General rule.* Except as otherwise provided in paragraph (c)(2)(ii) or (3) of this section, a person that, in the course of its trade or business, receives or collects interest on a mortgage on behalf of another person (e.g., the lender of record) is the interest recipient (the initial recipient) for the mortgage. In this case, the reporting requirement of paragraph (a) of this section does not apply to the transfer of interest from the initial recipient to the person for which the initial recipient receives or collects the interest. For example, if financial institution A collects interest on behalf of financial institution B, A is the initial recipient for the mortgage and is subject

to the reporting requirements of section 6050H, and B is not required to report the interest received on the mortgage from A.

(ii) *Exception*—(A) *Scope of exception.* Paragraph (c)(2)(i) of this section does not apply for a period for which—

(*1*) An initial recipient does not possess the information needed to comply with the reporting requirement of paragraph (a) of this section; and

(*2*) The persons for which the interest is received or collected would receive the interest in the course of its trade or business if the interest were paid directly to that person. For purposes of this paragraph (c)(2)(ii)(A)(*2*), if interest is received or collected on behalf of a person other than an individual, that person is presumed to receive interest in a trade or business.

(B) *Application of exception.* If the exception provided by this paragraph (c)(2)(ii) applies, the person for which the interest is received or collected is the interest recipient with respect to interest received or collected on the mortgage during the period described in paragraph (c)(2)(ii) of this section.

(3) *Interest received in the form of points.* For purposes of this section and § 1.6050H–2, in the case of prepaid interest received in the form of points (as defined in paragraph (f) of this section):

(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, only the lender of record or a qualified person (as defined in § 1.6050H–2(d)(2)) is treated as receiving the points. The lender of record or qualified person is treated as receiving all points paid by the payor of record in connection with the purchase of the principal residence.

(ii) *If designation agreement is in effect.* If a designation agreement is executed pursuant to § 1.6050H–2(d) with respect to points, only the designated party under the agreement is treated as receiving points with respect to any mortgage to which the agreement applies. The designated party is treated as receiving all points with respect to any mortgage to which the agreement applies.

* * * * *

(5) * * *

Example (5). On December 1, Borrower obtains from Lender funds with which to purchase an existing structure to be used as Borrower's principal residence. In connection with the acquisition loan, Lender charges Borrower $300 as points. Borrower pays this amount to Lender at closing using unborrowed funds. In addition, Lender receives from Borrower with respect to the mortgage $300 as interest other than points as determined under § 1.6050H–1(e). Because Lender has received at least $600 in interest, including points, with respect to Borrower's mortgage during the calendar year, Lender must report the payments in accordance with § 1.6050H–1(a) and § 1.6050H–2. Under those sections, Lender must separately state on the information return and the statement to Borrower the $300 received as interest other than points and the $300 received as points.

* * * * *

(e) *Amount of interest received on mortgage for calendar year*—(1) *In general.* For purposes of this section and § 1.6050H–2, interest includes mortgage prepayment penalties and late charges other than late charges for a specific mortgage service. Interest also includes prepaid interest in the form of points (as defined in paragraph (f) of this section). Whether an interest recipient receives $600 or more of interest on a mortgage for a calendar year is determined on a mortgage-by-mortgage basis. An interest recipient need not aggregate interest received on all of the mortgages of a payor of record held by the interest recipient to determine whether the $600 threshold is met. Therefore, an interest recipient need not report interest of less than $600 received on a mortgage, even though it receives a total of $600 or more of interest on all of the mortgages of the payor of record for a calendar year.

(2) *Calendar year*—(1) *In general.* Except as otherwise provided in paragraph (e)(2) (ii) or (iii) of this section, the calendar year for which interest is received is the later of the calendar year in which the interest is received or the calendar year in which the interest properly accrues. For example, if an interest recipient receives a payment on December 20, 1988, that includes interest accruing by December 31, 1988, the interest recipient must report the interest as received for 1988 even if the interest payment is not due until February 1989.

* * * * *

(iii) *Applicability to points.* Paragraphs (e)(2) (i) and (ii) of this section do not apply to prepaid interest in the form of points (as defined in paragraph (f) of this section). Points (as defined in paragraph (f) of this section) must be reported in the calendar year in which they are received.

* * * * *

(f) *Points treated as interest*—(1) *General rule.* Subject to the limitations of paragraph (f)(2) of this section, an amount is deemed to be points paid in respect of indebtedness incurred in connection with the purchase of the payor of record's principal residence (points) for purposes of this section and § 1.6050H–2 to the extent that the amount—

(i) Is clearly designated on the Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. sections 2601 *et seq.*, or any successor thereof (e.g., the Form HUD–1 or any successor form) as points incurred by the payor of record in connection with the indebtedness, for example as "loan origination fees" (including amounts so designated on Veterans Affairs (VA) and Federal Housing Administration (FHA) loans), "loan discount," "discount points," or "points";

(ii) Is computed as a percentage of the stated principal amount of the indebtedness incurred by the payor of record;

(iii) Conforms to an established practice of charging points in the area in which the loan is issued and does not exceed the amount generally charged in the area;

(iv) Is paid in connection with the acquisition by the payor of record of a residence that is the principal residence of the payor of record and that secures the loan. For this purpose, the lender of record may rely on a signed written statement of the payor of record that states whether the proceeds of the loan are for the purchase of the mortgagor's principal residence; and

(v) Is paid directly by the payor of record (taking into account paragraph (f)(3)(i) of this section).

(2) *Limitations.* An amount is not points for purposes of this section to the extent that the amount is—

(i) Paid in connection with indebtedness incurred for the improvement of a principal residence;

(ii) Paid in connection with indebtedness incurred to purchase or improve a residence that is not the payor of record's principal residence, such as a second home, vacation property, investment property, or trade or business property;

(iii) Paid in connection with a home equity loan, a line of credit, or a refinancing loan (except as provided by paragraph (f)(5) of this section), even though the loan is secured by the payor of record's principal residence;

(iv) Paid in lieu of amounts that are ordinarily stated separately on the Form HUD–1, such as appraisal fees, inspection fees, title fees, attorney fees, property taxes, and mortgage insurance premiums; or

(v) Paid in connection with the acquisition of a principal residence, to the extent that the amount is allocable to indebtedness in excess of the aggregate amount that may be treated as acquisition indebtedness under section 163(h)(3)(B)(ii).

(3) *Special rule—*(i) *Amounts paid directly by payor of record.* For purposes of paragraph (f)(1)(v) of this section, an amount is considered "paid directly" by the payor of record if it is—

(A) Provided by the payor of record from funds that have not been borrowed from the lender of record for this purpose as part of the overall transaction. The amount provided may include amounts designated as down payments, escrow deposits, earnest money applied at the closing, and other funds actually paid over by the payor of record at or before the time of closing; or

(B) Paid as points (within the meaning of paragraph (f) of this section) on behalf of the payor of record by the seller. For this purpose, an amount paid as points to an interest recipient by the seller on behalf of the payor of record is treated as paid to the payor of record and then paid directly by the payor of record to the interest recipient.

(ii) *Examples.*

Example 1. Financed Payment of Points. Buyer purchases a principal residence for $100,000. There are a total of $7,000 in closing costs (exclusive of down payment) charged in connection with the sale. Of this amount, $3,000 is charged as points (within the meaning of paragraph (f) of this section). At closing, Buyer makes a down payment of $20,000 and provides unborrowed funds in the amount of $4,000 for the payment of various closing costs other than points. Buyer finances payment of the points by increasing the principal amount of the loan by $3,000. Seller makes no payments on Buyer's behalf. Because Buyer has provided at closing funds that have not been borrowed from the lender of record for this purpose in an amount at least equal to the amount charged as points in the transaction, however, the lender of record (or a qualified person) must report $3,000 as points in accordance with this section and § 1.6050H–2.

Example 2. Seller-Paid Points. Buyer purchases a principal residence for $100,000. There are a total of $7,000 in closing costs (exclusive of down payment) charged in connection with the sale. Of this amount, $3,000 is charged to Buyer as points (within the meaning of paragraph (f) of this section). At closing, Buyer provides only $20,000 in unborrowed funds as a down payment. Seller agrees to pay all closing costs on behalf of Buyer, including the amount charged as points. Accordingly, the amount paid by Seller as points is treated as paid directly by Buyer, and the lender of record (or a qualified person) must report the $3,000 as points in accordance with this section and § 1.6050H–2.

(4) *Construction loans—(i) In general.* An amount paid in connection with indebtedness incurred to construct a residence, or to refinance indebtedness incurred to construct a residence, is deemed to be points for purposes of this section to the extent the amount—

(A) Is clearly designated on the loan documents as points incurred in connection with the indebtedness, for example as "loan origination fees," "loan discount," "discount points," or "points";

(B) Is computed as a percentage of the stated principal amount of the indebtedness incurred by the payor of record;

(C) Conforms to an established practice of charging points in the area in which the loan is issued and does not exceed the amount generally charged in the area;

(D) Is paid in connection with indebtedness incurred by the payor of record to construct (or to refinance construction of) a residence that is to be used, when completed, as the principal residence of the payor of record;

(E) Is paid directly by the payor of record; and

(F) Is not allocable to indebtedness in excess of the aggregate amount that may be treated as acquisition indebtedness under section 163(h)(3)(B)(ii).

(ii) *Limitation on refinancing of construction loans.* Amounts paid in connection with refinancing indebtedness incurred to construct a residence are not treated as points to the extent they are allocable to indebtedness that exceeds the indebtedness incurred to construct the residence.

(5) *Amounts paid to mortgage brokers.* Amounts received directly or indirectly by a mortgage broker are treated as points under this paragraph (f) to the same extent the amounts would be so treated if they were paid to and retained by the lender of record, and must be reported by the lender of record in accordance with this section and § 1.6050H–2.

(6) *Effect on deduction of points.* This section and § 1.6050H–2 address only the information reporting requirements of section 6050H and do not affect a payor of record's deduction for any amount in accordance with applicable provisions of the Internal Revenue Code.

(g) *Effective date—*(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section is effective for mortgage interest received after December 31, 1987. Section 1.6050H–1T contains rules for reporting mortgage interest received after December 31, 1984, and before January 1, 1988.

(2) *Points.* The reporting requirements of this section do not apply to prepaid interest received in the form of points before January 1, 1994. In addition, the inclusion of points in the determination of interest under paragraph (e)(1) of this section applies only to transactions occurring after December 31, 1993.

Par. 4. Section 1.6050H–2 is amended as follows:

1. Paragraphs (a)(2) (iii) and (iv) are revised.
2. Paragraphs (a)(2) (v) and (vi) are added.
3. Paragraph (b)(2)(ii) is revised.
4. The heading to paragraph (d) is revised.
5. Paragraphs (d)(2), (3) and (4) are revised.
6. The heading and text for paragraph (e)(1) are revised.
7. Paragraph (e)(1)(i) is added.
8. Paragraphs (e)(2) and (e)(3) are redesignated as (e)(1)(ii) and (e)(1)(iii), respectively.
9. New paragraph (e)(2) is added.
10. Paragraph (g) is revised.
11. The added and revised provisions read as follows:

§ 1.6050H–2 Time, form, and manner of reporting interest received on a qualified mortgage.

(a) * * *

(2) * * *

(iii) The amount of interest (other than points) required to be reported with respect to the qualified mortgage for the calendar year;

(iv) The amount of points paid directly by the payor of record (within the meaning of § 1.6050H–1) required to be reported with respect to the qualified mortgage for the calendar year. For purposes of this paragraph (a)(2)(iv), a lender of record may report an amount as having been paid directly by the payor of record if the amount was not loaned for this purpose by the lender of record as part of the overall transaction;

(v) The amount of any reimbursement to the payor of record of overpayments of interest in a prior year, as discussed in paragraph (a)(3) of this section; and

(vi) Any other information required by Form 1098 or its instructions.

* * * * *

(b) * * *

(2) * * *

(ii) A legend identifying the statement as important tax information that is being furnished to the Internal Revenue Service and notifying the payor of record that if the payor of record is required to file a return, a negligence penalty or other sanction may be imposed on the payor of record if the IRS determines that an underpayment of tax results because the payor of record overstated a deduction for this mortgage interest on the payor of record's return; and

* * * * *

(d) *Reporting under designation agreement.*

* * * * *

(2) *Qualified person.* A qualified person is either—

(i) a trade or business with respect to which the interest recipient is under common control within the meaning of § 1.414(c)–2, or

(ii) a person who is named as the designee by the lender of record or by a qualified person (under paragraph (d)(2) of this section) in a designation agreement entered into in accordance with paragraph (d)(3) of this section, and who either was involved in the original loan transaction or is a subsequent purchaser of the loan.

(3) *Designation agreement.* An interest recipient that designates a qualified person to satisfy the reporting requirements described in paragraph (d)(1) of this section must make that designation in a written designation agreement. The designation agreement must identify the mortgage(s) and calendar years for which the designated qualified person must report, and must be signed by both the designator and designee. A designee may report an amount as having been paid directly by the payor of record (for purposes of paragraph (a)(2)(iv) of this section) only if the designation agreement contains the designator's representation that it did not lend such amount to the payor of record as part of the overall transaction. The designator must retain a copy of the designation agreement for four years following the close of the calendar year in which the loan is made. The designation agreement need not be filed with the Internal Revenue Service.

(4) *Penalties.* A designated qualified person is subject to any applicable penalties provided in part II of subchapter B of chapter 68 as if it were an interest recipient. A designator is relieved from liability for applicable penalties by designating a qualified person under the provisions of paragraph (d)(3) of this section. Paragraph (e) of this section describes applicable penalties.

(e) *Penalty provisions*—(1) *Returns and statements the due date for which (determined without regard for extensions) is after December 31, 1987, and before December 31, 1989.* For purposes of this paragraph (e)(1) only, all references to the Internal Revenue Code shall refer to the Internal Revenue Code of 1986, as amended on or before December 31, 1987.

(i) *Failure to file return or to furnish statement.* The section 6721 penalty applies to an interest recipient that fails to file a return required by paragraph (a) of this section with respect to a payor of record. The section 6722 penalty applies to an interest recipient that fails to furnish a statement required by paragraph (b) of this section to a payor of record.

* * * * *

(2) *Returns and statements the due date for which (determined without regard for extensions) is after December 31, 1989*—(i) *Failure to file return or to furnish statement.* The section 6721 penalty applies to an interest recipient that fails to file a return required by paragraph (a) of this section with respect to a payor of record. The section 6722 penalty applies to an interest recipient that fails to furnish a statement required by paragraph (b) of this section to a payor of record.

(ii) *Failure to furnish TIN.* The section 6721 penalty may apply to an interest recipient that fails to furnish the TIN of a payor of record on a return required by paragraph (a) of this section. The section 6721 penalty may apply to an interest recipient that fails to request and to obtain the TIN of a payor of record under paragraph (f) of this section.

(iii) *Failure to include correct information.* The section 6721 penalty may apply to an interest recipient that fails to include correct information on a return required by paragraph (a) of this section. The section 6722 penalty may apply to an interest recipient that fails to include correct information on a statement required by paragraph (b) of this section to be furnished to a payor record.

* * * * *

(g) *Effective date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section is effective for mortgage interest received after December 31, 1987. Section 1.6050H–1T contains rules for reporting mortgage interest received after December 31, 1984, and before January 1, 1988.

(2) *Points.* The reporting requirement of this section does not apply to prepaid interest in the form of points received before January 1, 1994.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–31187 Filed 12–30–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Department of the Army Pamphlet 25–51]

Army Privacy Program

AGENCY: Department of the Army, DOD

ACTION: Proposed rule

SUMMARY: The Department of the Army proposed to revise 32 CFR part 505, The Army Privacy Program, by reassigning responsibilities for Access and Amendment Refusal Authority to conform with the reorganization of the Department of the Army as a result of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, and other organizational realignments. The proposed rule also established policy for the delegation of Access and Amendment Refusal Authority responsibilities and the disclosure of records for agency use in litigation.

EFFECTIVE DATE: Comments must be received on or before February 1, 1993 to be considered by this agency.

ADDRESSES: Comments are to be submitted to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-IDP/Mr. Walker, The Pentagon, Washington, DC 20310–0107.

FOR FURTHER INFORMATION CONTACT: Mr. William Walker at (703) 614–3729.

SUPPLEMENTARY INFORMATION: Executive Order 12291. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of subjects in 32 CFR part 505

Privacy.

Accordingly, the Department of the Army proposes to amend 32 CFR 505 as follows:

1. The authority citation for 32 CFR 505 reads as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 505.1 is amended by revising paragraphs (d)(1) and (d)(2); (g)(1) through (g)(20); and (h).

§ 505.1 General information.

* * * * *

(d) *Responsibilities.* (1) The Director of Information Systems for Command, Control, Communications, and Computers (DISC4) is responsible for issuing policy and guidance for the Army Privacy Program in consultation with the Army General Counsel.

(2) The Commander, U.S. Army Information Systems Command is responsible for developing policy for and executing the Privacy Act Program under the policy and guidance of the DISC4.

* * * * *

(g) *Access and Amendment Refusal Authority (AARA).* Each Access and Amendment Refusal Authority (AARA) is responsible for action on requests for access to, or amendment of, records referred to them under this part. The officials listed below are the only AARA for records in their authority. Authority may be delegated to an officer or subordinate commander. All delegations must be in writing. If an AARA's delegate denies access or amendment, the delegate must clearly state that he or she is acting on behalf of the AARA and identify the AARA by name and position in the written response to the requester. Denial of access or amendment by an AARA's delegate must have appropriate legal review. Delegations will not be made below the colonel (06) or GS/GM-15 level. Such delegations must not slow Privacy actions. AARAs will send the names, offices, telephone numbers of heir delegates to the Director of Information Systems for Command, Control, Communications and Computers, Headquarters, Department of the Army, ATTN: SAIS-IDP, Washington, DC 20310–0107; and the Department of the Army Privacy Review Board, Crystal Square 1, Suite 201, 1725 Jefferson Davis Highway, Arlington, VA 22202.

(1) The Administrative Assistant to the Secretary of the Army (AASA) for records of the Secretariat and its serviced activities, to include the personnel records maintained by the General Officer Management Office, personnel records pertaining to Senior Executive Service personnel serviced by the Office of the Secretary of the Army (OSA), and Equal Employment Opportunity (EEO) records from offices serviced by the OSA. The AASA will also serve as AARA for those records requiring the personal attention of the Secretary of the Army.

(2) The Inspector General (TIG) for TIG investigative records.

(3) The president or executive secretary of boards, councils, and similar bodies established by the Department of the Army to consider personnel matters, including the Army Board of Correction of Military Appeals, for records under their purview.

(4) The Deputy Chief of Staff for Personnel (DCSPER) for records of active and former non-appropriated fund employees (except those in the Army and Air Force Exchange Service), alcohol and drug abuse treatment records, behavioral science records, recruiting, Armed Services Vocational Aptitude Battery (ASVAB), equal opportunity, Junior Reserve Officers' Training Corps (ROTC), Senior ROTC Instructor, military academy cadet, selection, promotion, and reduction boards; special review boards; professional staff informational records; and entrance processing records (when records pertain to those not entering active duty).

(5) The Deputy Chief of Staff for Operations and Plans (DCSOPS) for military police records and reports and prisoner confinement and correctional records.

(6) Chief of Engineers (COE) for records pertaining to civil work (including litigation), military construction, engineer procurement, other engineering matters not under the purview of another AARA, ecology, and contractor qualifications.

(7) The Surgeon General (TSG) for medical records, except properly part of the Official Personnel Folder (OPM/GOVT–1 system of records).

(8) Chief of Chaplains (CCH) for ecclesiastical records.

(9) The Judge Advocate General (TJAG) for legal records under TJAG responsibility.

(10) Chief, National Guard Bureau (NGB) for personnel records of the Army National Guard.

(11) Chief, Army Reserve (CAR) for personnel records of Army retired, separated and reserve military personnel members.

(12) Commander, United States Army Material Command (USAMC) for records of Army contractor personnel of the Army Material Command.

(13) Commander, United States Army Criminal Investigation Command (USACIDC) for criminal investigation reports and military police reports included therein.

(14) Commander, United States Total Army Personnel Command (PERSCOM) for personnel and personnel related records of Army members on active duty and current Federal appropriated fund civilian employees. (Requests from former civilian employees to amend a record in any OPM system of records such as the Official Personnel Folder should be sent to the Office of Personnel Management, Assistant Director for Workforce Information, Compliance and Investigations Group, 1900 E Street, NW, Washington, DC 20415-0001.

(15) Commander, U.S. Army Community and Family Support Center (USACFSC) for records relating to morale, welfare and recreation activities; community life programs; family action programs, retired activities, club management, Army emergency relief, consumer protection, retiree survival benefits, and records dealing with Department of the Army relationships and social security veteran's affairs, United Service Organizations, U.S. Soldiers' and Airmen's home and American Red Cross.

(16) Commander, U.S. Army Intelligence and Security Command (INSCOM) for intelligence, investigative and security records; foreign scientific and technological information; intelligence training, mapping and geodesy information; ground surveillance records; intelligence threat assessments; and missile intelligence data relating to tactical land warfare systems.

(17) Commander, Army and Air Force Exchange Service (AAFES) for records pertaining to employees, patrons, and other matters which are the responsibility of the Exchange Service.

(18) Commander, Military Traffic Management Command (MTMC) for transportation records.

(19) Director of Army Safety for safety records.

(20) Commander, U.S. Army Information Systems Command (USAISC) for records which do not fall within the functional area of another AARA.

(h) *Department of the Army Privacy Review Board.* The Department of the Army Privacy Review Board acts on behalf of the Secretary of the Army in deciding appeals from refusal of the appropriate AARAs to amend records. Board membership is comprised of the AASA, the Commander, USAISC, Pentagon, and TJAG, or their representatives. The AARA may serve as a nonvoting member when the Board considers matters in the AARA's area of functional specialization. The Commander, USAISC, Pentagon, chairs the Board and provides the recording secretary.

* * * * *

3. Section 505.3 is amended by revising paragraphs (b)(10)(i) through (iv) and (b)(11)(i) through (iv).

§ 505.3 Disclosure of personal information to other agencies and third parties.

* * * * *

(b) * * *

(10) *Disclosure to the Department of Justice for Litigation.* Records may be disclosed as a routine use to any component of the Department of Justice when—

(i) The agency, or any component there of, or

(ii) Any employee of the agency in his or her official capacity, or

(iii) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

(iv) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which it is collected.

(11) *Disclosure for Agency use in Litigation.* A record may be disclosed in a matter before a court or adjudicative body before which the agency is authorized to appear when—

(i) The agency, or any component there of, or

(ii) Any employee of the agency in his or her official capacity, or

(iii) Any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee, or

(iv) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that their use of such records is relevant and necessary to the litigation, provided; however, that in each case, the agency determines that disclosure of the records to the court or adjudicative body is a use of the information contained in the records that is compatible with the purpose for which it is collected.

* * * * *

Dated: December 16, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-31781 Filed 12-30-92; 8:45 am]

BILLING CODE 3810-01-F

SELECTIVE SERVICE SYSTEM

32 CFR Part 1636

Selective Service Regulations; Registrant Processing Procedures

AGENCY: Selective Service System.

ACTION: Proposed rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 App. U.S.C. 451 et seq.) are revised to assure greater fairness and efficiency in administration in the processing of registrants.

DATES: *Comment Date:* Written comments received on or before March 1, 1993 will be considered. *Effective date:* Subject to the comments received, the amendment is proposed to become effective upon publication in the **Federal Register** of a final rule.

ADDRESSES: Written comments to: Selective Service System, ATTN: General Counsel, Washington, DC 20435.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Washington, DC 20435, Phone (202) 724-1167.

SUPPLEMENTARY INFORMATION:

A. Discussion of Proposed Regulations

Part 1636—Classification of Conscientious Objectors would be revised by removing paragraph (b) § 1636.8 which reads: "The registrant's stated convictions should be a matter of conscience which would give him no rest or peace should he participate in war." This action is proposed because of allegations that paragraph (b) is unclear.

B. Matters of Rule Making Procedure

This amendment to Selective Service Regulations is published pursuant to section 13(b) of the Military Selective Service Act (50 App. U.S.C. 463(b)) and Executive Order 11623. These Regulations implement the Military Selective Service Act (50 App. U.S.C. 451 et seq.).

Interested persons are invited to submit written comments on the proposed regulation. All written comments received in response to this notice of proposed rulemaking will be available for public inspection in the Office of the General Counsel from 9 a.m. to 4 p.m. Monday through Friday, except legal holidays.

As required by Executive Order 12291, I have determined that this proposed rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), I have determined that this regulation does not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 32 CFR Part 1636

Armed forces—draft.

Dated: December 14, 1992.

Robert W. Gambino,

Director of Selective Service.

The proposed regulation is:

PART 1636—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

1. The authority citation for part 1636 continues to read as follows:

Authority: Military Selective Service Act 50 App. U.S.C. 451 et. seq.: E.O. 11623.

§ 1636.8 [Amended]

2. In § 1636.8, paragraph (b) is removed and reserved.

[FR Doc. 92-31809 Filed 12-30-92; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Ch VI

The Higher Education Amendments of 1992; Negotiated Rulemaking

AGENCY: Office of Postsecondary Education, U.S. Department of Education.

ACTION: Notice of meetings to conduct negotiated rulemaking.

SUMMARY: The Assistant Secretary for Postsecondary Education of the United

States Department of Education (Department) will convene a group to participate in two negotiated rulemaking sessions. This group will include individuals representing students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan services, guaranty agency services, and collection agencies. This group will convene twice, once in January and again in February, to conduct negotiated rulemaking. The Assistant Secretary, by dividing the negotiations into two sessions, hopes to provide negotiators with sufficient time to confer and get feedback from a variety of interested parties. This group will review draft proposed regulations for certain sections of parts B, G, and H of title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992. These draft proposed regulations were developed following recent regional meetings throughout the country at which issues related to these three parts where the Secretary has authority to set policy were discussed.

The Department has arranged for mediators from the private sector to mediate these upcoming negotiated-rulemaking sessions. The mediators will not be involved with the substantive development of the proposed regulations. Their role is to:

- Chair negotiating sessions;
- Help the negotiating process run smoothly;
- Help participants define issues and reach consensus.

The meeting is open to members of the public who wish to observe the process.

DATES: The two sessions are scheduled for January 4 through 8, 1993 and from February 1 through 5, 1993. Each full day of negotiations will begin at 8 a.m.

ADDRESSES: The January meeting will be held at the Washington Marriott, 1221 22nd Street, NW., Washington, DC. Telephone number: 202–872–1500. The February meeting will begin at 8 a.m., Monday, February 1, 1993; it will be held at the Sheraton National Hotel, 900 South Orme Street, Arlington, VA 22204. Telephone: 1–800–468–9090 or 703–521–1900.

FOR FURTHER INFORMATION CONTACT: If you have logistics questions about the upcoming negotiations, please contact Mr. Chris Johnson at 202–708–5547. If you have policy or procedures questions, please contact Mr. Robert W. Evans at 202–708–8242.

SUPPLEMENTARY INFORMATION:

Issues for Negotiation

The issues that will be negotiated are those in certain sections of parts B, G, and H of title IV of the Higher Education Act where the Secretary has the authority to set policy. The Secretary published a selective list of these issues in the **Federal Register** notice announcing the regional meetings (57 FR 38639, August 26, 1992).

Background

Section 492 of part G of title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992 that were signed into law July 23, 1992, contains procedural requirements the Department is to follow in developing and issuing regulations to govern part B (Federal Family Education Loan Program, formerly Guaranteed Student Loans); part G (General Provisions); and part H (Program Integrity Triad) of title IV. In particular, paragraph (b) of section 492 requires the Secretary, after holding regional meetings, to "prepare draft regulations implementing parts B, G, and H of this title * * * and submit such regulations to a negotiated rulemaking process." The statute further requires that participants in this negotiated rulemaking process be chosen by the Secretary from individuals nominated by groups participating in the regional meetings that preceded the negotiating sessions. The statute requires the Secretary to select individuals as negotiators who reflect the "diversity in the industry, representing both large and small participants, as well as individuals serving local areas and national markets." The Department announced that it would hold regional meetings (57 FR 38639, August 26, 1992) and convened these meetings in San Francisco, CA; New York City, NY; Kansas City, MO; and Atlanta, GA, between September 14 and September 30, 1992.

Groups participating in these regional meetings nominated more than 275 individuals to serve as negotiators.

Participants

The following is a list of the participants whom the Department has invited to participate in the negotiated rulemaking sessions. The list also includes the names of mediators and Federal negotiators. The Department may add additional negotiators to this list. Each participant represents one of the groups specified in the statute (section 492(a)(1)). The Department has attempted to invite from among those individuals nominated by the groups represented at the regional meetings a range of individuals representing the various viewpoints of the interest groups specified in the statute and the various geographic areas of the nation.

Negotiators for Part B

Robert W. Evans, Federal Negotiator, Director, Division of Policy Development, Policy, Training & Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 4310, Washington, D.C. 20202
Christine A. Appelbaum, Vice President, Commerce Bank, MO
Taft Benson, Vice President and Regional Manager, Chase Education Financial Center, TX
Dan Cheever, President, American Student Assistance, MA
Paul Eber, Corporate Counsel, Texas Guaranteed Student Loan Corporation, TX
Karen Fooks, Director of Financial Aid, University of Florida, FL
Gary Frazier, Vice President of Sales, Unger & Associates, Inc., TX
Jean S. Frohlicher, President, National Council of Higher Education, Loan Programs, Inc., D.C.
Pronita Gupta, Legislative Director, United States Student Association, D.C.
Kristie A. Hansen, General Counsel, Colorado Student Loan Program, CO
Mildred Higgins, Director of Financial Aid, Xavier University of Louisiana, LA
Elizabeth M. Imholz, Attorney, Legal Services for New York City, CA
Rober S. Inglis, Vice President, Servicing, Policy & Compliance, Student Loan Marketing Association, D.C.
Robert H. James, Director, Student Financial Services, ITT Educational Services, Inc., IN
Roxie La Fever, Director of Education Credit, Southwest Student Services, AZ
Chris Larger, Associate Director, National Association of College and University Business Officers, D.C.
Cruzita Lucero, Director of Financial Aid, Walters State Community College, TN
Dr. Dallas Martin, President, National Association of Student Financial Aid Administrators, D.C.
Barmak Nassirian, Assistant Director, Federal Relations, American Association of State Colleges and Universities, D.C.
Edward E. Pollack, Executive Vice President/Chief Operating Officer, USA Funds, Inc., IN
Sheila M. Ryan, Director of Planning & Development, Nellie Mae, MA
Jeffrey Stokolos, Legislative Counsel, American Medical Association, IL
Anne Sturtevant, Director of Financial Aid, Emory University, GA
Brian Williams (Student, University of Wisconsin, Madison)
Robert Zier, Senior Vice President, Wachovia Student Financial, Services, Inc., NC

Negotiators for Part G

Brian Kerrigan, Federal Negotiator, Acting Director, Policy, Training, & Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW., ROB-3, room 4310, Washington, D.C. 20202

Kenneth W. Babcock, Directing Attorney, Public Counsel, CA

Joan Berkes, Associate Director for Professional, Development, National Association of Student Financial Aid Administrators, D.C.

Ellen V. Blackman, Vice President, Student Finance, Education Management Corporation/Art Institute International, PA

Mary F. Bushman, Vice President, Government Relations, AFSA Data/Fleet Financial Group, IL

Mary J. Calais, Director Public Policy, National Association of College and University Business Officers, D.C.

Joseph Camille, Director of Financial Aid, University of Missouri—Columbia, MD

Mary L. Dover, Director of Financial Aid, Johnson County Community College, KS

Elaine N. Eacona-Neely, Director Student Financial Aid, Educational Medical, Inc., GA

Ed Elmendorf, Vice President for Government Relations, American Association of State Colleges and Universities, D.C.

Judith Flink, Director of Student Financial Services, University of Illinois-Chicago, IL

Josh Grable, (Student, University of Arizona)

Kenneth L. Howard, Director of Financial Aid, University of the District of Columbia, D.C.

David S. Levy, Director of Financial Aid, California Institute of Technology, CA

Doug Marrow, (Student, Los Angeles Valley College, CA)

Carol A. Mowbray, Coordinator, Student Benefits & Support Services, Northern Virginia Community College, VA

Laurie Quarles, Deputy Executive Director, National Council of Higher Education, Loan Programs, Inc., D.C.

Richard C. Stillwagon, Director of Scholarships & Financial Aid, Virginia Polytechnic Institute & State University, VA

Negotiators for Part H

Carol F. Sperry, Federal Negotiator, Director, Eligibility & Certification Division, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 3919, Washington, D.C. 20202

Carol Catoldo, Executive Director of CATDS, D.C.

Claire Cotton, Director, Association of Independent College & Universities of Massachusetts (AICUM), MA

Carolyn Moffet, President, Superior Career Institute, NY

A. Jack Moore, President, City College, Inc., OK

Stephen D. Parker, Executive Director, Accrediting Commission for Independent Colleges and Schools, D.C.

Mark L. Pelesh, Legal Counsel, Accrediting Commission for Trade & Technical Schools, D.C.

Dr. John Petersen, Executive Director, Accrediting Commission for Community & Junior Colleges, Western Association of Schools & Colleges, CA

Marianne Phelps, Vice President, The Council on Postsecondary Accreditation, D.C.

Sterling R. Provost, Assistant Commissioner, Utah State Board of Regents, UT

Javier Riojas, Esq., Attorney, Texas Rural Legal Aid, TX

James T. Rodgers, Executive Director, Southern Association of Colleges & Schools, GA

Jeanne Russell, Administrator, Accrediting Bureau of Health Education Schools, IN

Richard M. Scholobohm, M.D., Clinical Professor, University of California, San Francisco, CA

Dr. Jane A. Stockdale, Chief, Division of Veteran/Military Education, Pennsylvania Department of Education, PA

Douglas Ward, Ph.D., Director, Department of Education, American Ostepathic Association, IL

Jane Wellman, Vice President for Government Relations, National Association of Independent Colleges & Universities, DC

Mediators for Parts B, G, and H

Philip J. Harter, Law Offices, Suite 404, 2301 M Street, NW., Washington, D.C. 20037

Howard S. Bellman, Suite 413, 119 Martin Luther King Jr. Blvd., Madison, WI 53703

Alana S. Knaster, The Mediation Institute, 22231 Mulhollard Highway, Woodland Hills, CA 91364

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–31873 Filed 12–30–92; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN6–1–5148; FRL–4551–1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a requested revision to the Indiana State Implementation Plan (SIP) for Total Suspended Particulate (TSP). The revision pertains to an emission trade or "bubble" for Joseph E. Seagram and Sons (Seagram), which is located in Lawrenceburg, Indiana. USEPA's proposal is based upon Indiana's March 3, 1989, submittal of a proposed revision to the SIP that repeals rule 326 Indiana Administrative Code (IAC) 6–1–8, and adds a new section (326 IAC 6–1–8.1). This submission also contains an amendment to 326 IAC 6–1–7 to include a reference for the new section and a recodification of the applicable rule.

DATES: Comments on this revision and on USEPA's proposed action must be received by February 1, 1993.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available at the following addresses for review: (It is recommended that you telephone David Pohlman at (312) 886–3299, before visiting the Region 5 office.)

United States Environmental Protection Agency, Region 5, Regulation Development Branch (5AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments on this proposed rule should be addressed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act, USEPA promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for all areas within each State. For Indiana, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.315. Part D of the Clean Air Act requires nonattainment TSP SIPs to provide for attainment of the primary NAAQS by the end of 1982 and provide for attainment of the secondary NAAQS as expeditiously as practicable. The requirements for an approvable SIP are described in the "General Preamble" for part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979) and 44 FR 67182 (November 23, 1979). Dearborn County has been designated as a nonattainment area for TSP under section 107(d) of the Act (40 CFR 81.315). As discussed further below, however, the current NAAQS for particulate matter pertains solely to particulate matter with an aerodynamic diameter of a nominal 10 microns or less (PM$_{10}$). On November 15, 1990, Congress enacted the Clean Air Act Amendments of 1990, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

Pursuant to the Amendments, certain areas were designated nonattainment for PM$_{10}$. All other areas were designated unclassifiable for PM$_{10}$. Seagram is located in an area designated as unclassifiable for PM$_{10}$. See section 107(d)(4)(B).

Summary of the Proposed Revision

Seagram operates a distillery and storage facility in Dearborn County. The plant is equipped with two primary boilers, identified as Boiler 5 and 6, both of which may be fueled by coal, natural gas, or fuel oil. Boiler 6 is used as the principal source of steam used for production purposes. Boiler 5 is utilized by Seagram to produce steam used for space heating and as a backup source for process steam when necessary. Boiler 5 is equipped with a mechanical collector and Boiler 6 is equipped with an electrostatic precipitator (ESP).

TSP emission limits for this and other sources of particulate matter in Dearborn County were established by Rule 325 IAC 6–1–8, which was approved by USEPA as a part of the Dearborn County nonattainment SIP on July 16, 1982 (47 FR 30972). (Although the State later recodified this rule as 326 IAC 6–1–8, USEPA has not approved it). The 1982 SIP establishes a 0.01 lbs/MMBtu emission limit for Boiler 6. Seagram claims that this emission limit cannot be reasonably maintained on a consistent basis. The emission limit for Boiler 6 was based on the assumption that the ESP was 99.9% efficient. Seagram claims that the test data used for the original estimate of efficiency was faulty. Indiana has submitted revised limits for Seagram, which are the subjects of this proposed rulemaking action.

New section 326 IAC 6–1–8.1 repeals section 326 IAC 6–1–8 and replaces its tabular format with text. The proposed revisions to the emission limitations for Seagram Boilers 5 and 6 are contained in 326 IAC 6–1–8.1(b). The zero emission limits in the current rule for Seagram Boilers 1, 2, 3, and 4 have been deleted because these boilers no longer exist. All other emission limitations in 326 IAC 6–1–8 are retained in 326 IAC 6–1–8.1.

Seagram requested increasing the emission limitation on Boiler 6 from 0.01 to 0.18 lbs/MMBtu resulting in a 41.5 lbs/hr increase in allowable TSP emissions. The higher emission limit would be offset by decreasing the allowable TSP emission limit on Boiler 5 from 0.62 to 0.018 lbs/MMBTU when Boiler 6 is burning a fuel other than natural gas. This would result in a decrease of allowable emissions from Boiler 5 of 103.1 lbs/hr. When Boiler 6 is using natural gas or is not in operation, Boiler 5 remains subject to the original limit of 0.62 lbs/MMBtu.

The proposed combined annual emission limit for Boilers 5 and 6 is the sum of the individual limits contained in the existing rule. Combining annual limits provides Seagram flexibility in boiler usage.

Indiana incorporated these changes into 326 IAC 6–1–8.1, which it submitted to USEPA as a proposed revision to the SIP on March 3, 1989. The Indiana Department of Environmental Management (IDEM) believes the rule changes to be consistent with the USEPA's Emission Trading Policy Statement (ETPS) as published in the December 4, 1986, **Federal Register** (51 FR 43814).

Earlier Proposed Rulemaking Action

On November 14, 1990 (54 FR 48791) USEPA proposed to disapprove the State's SIP revision request. The proposed disapproval cited several reasons for the proposed action: (1) The State failed to demonstrate that the requested SIP emission limit was RACT for Seagram, (2) the State did not provide a detailed analysis of the proposed revision as required by the ETPS, (3) the modeling required in support of the State's request had not been submitted, and (4) finally, the State's request did not meet the enforceability requirements for approval as a SIP revision.

USEPA received comments on its proposed rulemaking from the State and from Seagram. Subsequent to USEPA's proposal (and the enactment of the 1990 Amendments), USEPA decided to review particulate matter emissions trades under the current NAAQS (PM_{10}), and thus to reconsider its proposed rule for Seagram. Since RACT is required only for nonattainment areas, RACT is no longer considered necessary for the proposed Seagram rule. Additional modeling and recordkeeping requirements will still be necessary for approval of this SIP revision. Today USEPA is reproposing rulemaking action on the requested SIP revision for Seagram.

Current Review

USEPA's principal criteria for evaluating this requested revision are given in the ETPS. Due to the fact that the current NAAQS for particulate matter is PM_{10},[1] the emission trade must ensure that the resulting potential increases in emissions do not jeopardize the PM_{10} ambient standards. See 51 FR 43842. Seagram lies in an area designated unclassifiable for PM_{10}. See section 107(d)(4)(B) and 56 FR 56694. As a result, for emission trading purposes, this emission trade is treated as being in an attainment area.

The ETPS requires an emission trade to be consistent with the ambient attainment and maintenance of the NAAQS. This involves the use of dispersion modeling to determine the ambient impacts due to the emission increases and emission decreases. See 51 FR 43833. Also, to determine which one of the two emission limitations applies to Boiler 5, additional daily records are needed. USEPA is proposing to approve this revision. However, prior to final approval, the State must submit to USEPA as part of the proposed SIP, provisions requiring daily records of the times when each fuel type is fired at each of the two boilers. In addition, the State must submit a modeling analysis of the emission increases, following correct USEPA guidelines, which shows no PM_{10} ambient impact levels at any receptors are above the significant levels as specified in the ETPS (This emission trade requires Level II modeling. See 51 FR 43844). For the ETPS (51 FR 43845), USEPA will interpret the PM_{10} significant levels to be the same as the TSP significant levels (10 $\mu g/m^3$ for the 24-hr standard and 5 $\mu g/m_3$ for the annual standard).

Proposed Rulemaking Action and Solicitation of Public Comments

Indiana's application for a emission trade at Seagram meets the criteria of the Emission Trading Policy Statement, except for a PM_{10} modeling analysis. The requested SIP revision also fails to include federally enforceable recordkeeping requirements necessary for determining compliance with the rule. USEPA is proposing to approve the new rule, 326 IAC 6–1–8.1 in conjunction with the recodification of the applicable rule and the repealing of 326 IAC 6–1–8, the prior control requirements. Prior to final approval, the State must submit the needed recordkeeping requirements for incorporation in the SIP and the modeling analysis as discussed above. If the State fails to submit these items, USEPA will disapprove this requested SIP revision without further proposal.

Public comments are solicited on the requested SIP revision and on USEPA's proposal to approve. Public comments received by February 1, 1993 will be considered in development of USEPA's final rulemaking action. because today's rule is markedly different from USEPA's earlier proposed rule, USEPA has determined that the comments in response to the earlier proposal are no longer relevant. USEPA will not respond to the earlier comments in its final rule. Commentors who believe their comments remain germane, must resubmit their earlier comments with an explanation of why they remain germane. USEPA will address these comments in the final rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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[1] PM_{10} refers to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. PM_{10} is the replacement criteria pollutant for TSP.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 222) from the requirements of Section 3 of Executive Order 12291 until April of 1991. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110, and 172 of the Clean Air Act will not have significant economic impact on a substantial number of small entities. SIP approvals (or redesignations), therefore, do not create any new requirements but simply approve requirements that are already State Law. SIP approvals (or redesignations), therefore, do not add additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State's actions. The Clean Air Act forbids the USEPA to base its action concerning SIPs on such grounds.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Dated: December 10, 1992.

William H. Sanders,

Acting Regional Administrator.

[FR Doc. 92–31749 Filed 12–30–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 55

[FRL–4551–4]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking, Consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations (40 CFR part 55). Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by Section 328(a)(1) of the Clean Air Act ("the Act"), as amended by Public Law 101–549, the Clean Air Act Amendments of 1990, 42 U.S.C. 7627. The portion of the OCS air regulation that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD) and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. These requirements contained in "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources" (December 15, 1992) and "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources" (December 15, 1992) are incorporated by reference into 40 CFR 55.14 of this part, and are listed in Appendix A to part 55. Proposed changes to these requirements are discussed below.

DATES: Comments on the proposed updates must be received on or before February 1, 1992.

ADDRESSES: Comments must be mailed (in duplicate if possible) to:

EPA Air Docket (A–5), Attn: Docket No. A–92–70, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Although the initial OCS rulemaking was determined to be subject to the requirements of section 307(d) of the Clean Air Act, this rulemaking is not subject to those requirements, nor are any rulemakings that are undertaken to update the OCS requirements to maintain consistency with onshore requirements, pursuant to section 328(a)(1). Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–92–70. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (A–5), Attn: Air Docket No. A–92–70, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–92–70, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, Room M–1500.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, (415) 744–1195 Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55[1], which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, Section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur: (1) At least annually; (2) upon receipt of a Notice of Intent (NOI); and (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This NPR represents the first update of part 55 and is being promulgated in response to the submittal of rules by local air pollution control agencies. Public comments received in writing within 30 days of publication of this notice will be considered by EPA before promulgation of the final updated rule. EPA may choose in the future, however, to promulgate updates using direct-final rulemaking, to speed up the incorporation of state and local agency regulations into 40 CFR part 55.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rules does not imply that a rule meets the requirements of the Act for SIP's approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

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[1] The reader may refer to the Notice of proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the state and local rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.[2]

After review of the rules submitted by Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make all the submitted rules applicable to sources for which Santa Barbara APCD is the COA. Included are revisions to rules that already apply to OCS sources and rules submitted by the District to be added:

Rule 202 Exemptions to Rule 201 (Adopted 03/10/92)
Rule 325 Storage of Petroleum and Petroleum Products (Adopted 12/10/91)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 12/10/91)
Rule 342 Control of Oxides of Nitrogen (No$_x$ from Boilers, Steam Generators and Process Heaters (Adopted 03/10/92)

After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which Ventura County APCD is designated as the COA. None of the existing OCS requirements were deleted. Included are revisions to rules that already apply to OCS sources and rules submitted by the District to be added:

Rule 26 New Source Review—General (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit to Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 45.2 Asbestos Removal Fees (Adopted 10/4/92)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds and Well Cellars (Adopted 6/16/92)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.10 Components Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

The following rules were submitted by Ventura County APCD, but are not proposed for inclusion in the above document because they are administrative, procedural, or not applicable to OCS sources:

Rule 26.4 New Source Review—Emission Banking (Adopted 10/22/91) Comment: Administrative and procedural
Rule 26.5 New Source Review—Community Bank (Adopted 10/22/91) Comment: Administrative and procedural
Rule 26.7 New Source Review—Notification (Adopted 10/22/91) Comment: Public notice requirement
Rule 26.9 New Source Review—Power Plants (Adopted 10/22/91) Comment: Administrative requirement on the APCO
Rule 51 Nuisance (Adopted 10/22/68) Comment: Not related to ambient standard or part C
Rule 150 General (Adopted 9/17/91) Comment: Administrative requirement on the APCO
Rule 151 Episode Criteria (Adopted 9/17/91) Comment: Administrative requirement on the APCO
Rule 152 Episode Notification Procedures (Adopted 9/17/91) Comment: Administrative requirement on the APCO
Rule 153 Health Advisory Episode Actions (Adopted 9/17/91) Comment: Administrative requirement on the APCO
Rule 157 Air Pollution Disaster (Adopted 9/17/91) Comment: Administrative requirement on the APCO

The following rule is proposed to be deleted from the Ventura County APCD requirements applicable to OCS sources. It will be superseded by a rule proposed in this notice for inclusion.

Rule 157 First State Episode Actions (Adopted 11/20/79). (Replaced by Rule 154, Stage 1 Episode Actions, Adopted 9/17/91)

Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requires of Section 3 of Executive Order 11291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and in the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0249.

This collection of information is estimated to have a public reporting burden averaging 413 hours per response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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[2] Upon delegation the onshore area will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y) U.S. Environmental Protection Agency; 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Outer Continental Shelf, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Hydrocarbons, Nitrogen oxides, Intergovernmental relations, Reporting and Recordkeeping requirements, Incorporation by reference, Permits.

Dated: December 23, 1992.

Nora L. McGee,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.8 is proposed to be amended by adding the OMB control statement to the end of the section to read as follows:

§ 55.8 Monitoring, reporting, inspection and compliance.

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(Approved by the Office of Management and Budget under the control number 2060–0249.)

3. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(F) and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

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(e) * * *
(3) * * *
(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* (December 15, 1992).

(G) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* (December 15, 1992).

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4. Appendix A to CFR Part 55 is proposed to be amended by revising paragraphs (6) and (8) under the heading California to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

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(California) * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* (December 15, 1992):

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Storage of Petroleum and Petroleum Products (Adopted 12/10/91)
Rule 326 Effluent Oil Water Separators (Adopted 10/23/78)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emmission Monitoring (Adopted 10/23/78)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems. Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines(Adopted 12/10/91)
Rule 342 Control of Oxides of Nitrogen (NO_x from Boilers, Steam Generators and Process Heaters) (3/10/92)
Rule 505 Breakdown Conditions Sections A.,B.1., and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)

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(8) The following requirements are contained in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources, (December 15, 1992):

Rule 2 Definitions (Adopted 5/8/90)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15 Permit Issuances (Adopted 7/5/83)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permits (Adopted 1/8/91)
Rule 24 Source Recordkeeping and Reporting (Adopted 11/21/78)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)

Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)

Appendix II-A—Information Required for Applications to the Air Pollution Control District

Appendix II-B—Best Available Control Technology (BACT) Tables

Rule 42 Permit Fees (Adopted 6/19/90)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 7/5/83)
Rule 56 Open Fires (Adopted 5/24/88)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 7/5/83)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/16/92)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/19/90)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 10/21/86)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 9/5/89)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 5/16/89)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 3/28/89)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 75 Circumvention (Adopted 11/27/78)

Appendix IV-A—Soap Bubble Tests

Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

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[FR Doc. 92-31932 Filed 12-30-92; 1:47 pm]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300270; FRL-4178-8]

RIN 2070-AC18

Methyl Methacrylate-2-Sulfoethyl Methacrylate-Dimethylaminoethyl Methacrylate-Glycidyl Methacrylate-Styrene-2-Ethylhexyl Acrylate Graft Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of methyl methacrylate-2-sulfoethyl methacrylate-dimethylaminoethyl methacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only. This proposed regulation was requested by DowElanco.

DATES: Comments, identified by the document control number [OPP-300270], must be received on or before February 1, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711-I, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7252.

SUPPLEMENTARY INFORMATION: At the request of DowElanco, P.O. Box 1706, Midland, MI 48641-1706, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of methyl methacrylate-2-sulfoethyl methacrylate- dimethylaminoethyl methacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for methyl methacrylate-2-sulfoethyl methacrylate-dimethylaminoethyl methacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer will not need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Methyl methacrylate-2-sulfoethyl methacrylate-dimethyl aminoethylmethacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum average molecular weight of the above-mentioned copolymer is 9,600. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. The above-mentioned copolymer is not a cationic polymer, nor is it reasonably expected to become a cationic polymer in a natural aquatic environment.

3. The above-mentioned copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. The above-mentioned copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The above-mentioned copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned copolymer does not contain reactive functional groups that are intended or reasonably expected to undergo further reaction.

9. The above-mentioned copolymer is not designed or reasonably expected to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that when used in accordance with good agricultural practice this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300270]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 17, 1992.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Methyl methacrylate-2-sulfoethyl methacrylate-dimethylaminoethyl methacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer (minimum average molecular weight 9,600).	....	Carrier
* * * * * * *		

* * * * *

[FR Doc. 92–31812 Filed 12–30–92; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 1E4024/P553; FRL–4179–2]

RIN 2070–AC18

Pesticide Tolerance for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for combined residues of the fungicide metalaxyl and its metabolites in or on the raw agricultural commodity cranberry. The proposed regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 1E4024/P553], must be received on or before February 1, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resource Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. Office location and telephone number: Rm. 718C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 1E4024 to EPA on behalf of the Agricultural Experiment Stations of Massachusetts, New Jersey, and Washington. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the raw agricultural commodity cranberry at 4.0 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 6-month feeding study in dogs fed diets containing 50, 250, and 1,000 ppm with a no-observed-effect-level (NOEL) of 250 ppm (equivalent to 6.25 milligrams (mg)/kilogram (kg)/day) and a lowest-effect-level (LEL) of 1,000 ppm (25 mg/kg/day) based on increased absolute liver weight, serum alkaline phosphatase levels, and liver to brain-weight ratios.
2. A subchronic feeding study in rats fed diets containing 50, 250, and 1,250 ppm with a NOEL of 250 ppm (equivalent to 12.5 mg/kg/day) and an LEL of 1,250 ppm (equivalent to 62.5 mg/kg/day) based on decreased food consumption (male rats), minimal hypertrophy of parenchymal cells of the liver (female rats), and ovarian cysts of unknown origin.
3. A developmental toxicity study in rats given gavage doses of 50, 250, and 400 mg/kg/day with NOEL's for maternal and fetotoxic effects at 50 mg/kg/day and no developmental toxicity observed under the conditions of the study.
4. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg/day (highest dose tested). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity (slight body weight loss at 300 mg/kg/day).
5. A three-generation reproduction study in rats fed diets containing 50, 250, and 1,250 ppm with a NOEL for reproductive effects of 1,250 ppm (equivalent to 62.5 mg/kg/day). There were no reproductive effects observed under the conditions of the study.
6. Metalaxyl did not induce gene mutations in bacteria, yeast, and mouse lymphoma cells in vitro with or without metabolic activation. Metalaxyl did not cause structural or numerical chromosomal aberrations in hamsters (in vivo nucleus anomaly assay), or mice (a dominant lethal assay). No DNA damage was observed in bacteria, and no unscheduled DNA synthesis was noted in rat primary hepatocytes or human fibroblasts in vitro as a result of exposure to metalaxyl.
7. A 2-year carcinogenicity study in mice fed diets containing 50, 250, and 1,250 ppm with no systemic or compound-related carcinogenic effects observed under the conditions of the study.
8. A 2-year chronic feeding/carcinogenicity study in rats fed diets containing 50, 250, and 1,250 ppm with a systemic NOEL of 250 ppm (equivalent to 12.5 mg/kg/day) based on an increase in liver weight to body weight ratios and periacinar vacuolation of hepatocytes. There were no compound-related carcinogenic effects observed under the conditions of the study.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based on compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indications of compound-related carcinogenic effects were noted at any of the treatment doses, sexes, or species.

The reference dose (RfD) based on the 6-month feeding study in dogs (NOEL of 6.25 mg/kg/day) and using a hundredfold uncertainty factor is calculated to be 0.06 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) for existing uses of metalaxyl utilizes 18.7 percent of the RfD for the overall U.S. population and 36.5 percent of the RfD for the subgroup most highly exposed (children aged 1 through 6). The proposed tolerance for cranberry would utilize 0.2 percent of the RfD, a negligible increase in dietary exposure to residues of metalaxyl.

The nature of the residue in plants is adequately understood, and an adequate analytical method, capillary gas chromatography using nitrogen/phosphorus detector in nitrogen mode, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since cranberries are not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.408 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 1E4024/P553]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 14, 1992.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.408, by adding and alphabetically inserting the raw agricultural commodity cranberry, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cranberry	4.0
* * * * *	

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[FR Doc. 92-31811 Filed 12-30-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 90-337 (Phase II); FCC 92-517]

Regulation of International Accounting Rates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On November 17, 1992, the Commission adopted a Third Further Notice of Proposed Rulemaking in Phase II of the Regulation of International Accounting Rates proceeding seeking comment on a proposal to apply an equivalency requirement to end user interconnections of international private lines occurring at a U.S. carrier's central office. Currently, only the resale of international private lines for the provision of switched services is subject to an equivalency requirement. Furthermore, the Commission asked for comments on the appropriate means of implementing any such requirement.

DATES: Comments must be submitted on or before February 12, 1993. Reply comments must be submitted on or before March 12, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Warren, Attorney, Common Carrier Bureau, (202) 632-3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Further Notice of Proposed Rulemaking adopted on November 17, 1992 and released on November 27, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., Washington, DC 20036.

Paperwork Reduction Act

The following collection of information contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of the submission may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., Washington, DC 20036. Persons wishing to comment on this collection of information should direct their comments to Jonas Neihardt, (202) 395-4814, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records and Management Division, room 416, Paperwork Reduction Project, Washington, DC 20554. For further information contact July Boley, Federal Communications Commission, (202) 632-7513.

Title: Regulation of International Accounting Rates

OMB Number: 3060–0454

Action: Proposed Revision

Respondents: Businesses or other for profit, including small businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 230 responses; 2 hours per response; 460 hours total.

Needs and Uses: The Third Further Notice of Proposed Rulemaking solicits public comment on whether the Commission should apply an equivalency requirement to interconnections of end users' international private lines occurring at a U.S. carrier's central office. Comment is also sought on whether the U.S. carriers should be required to demonstrate, through the ISP waiver and notification process or a more appropriate alternative method, that equivalent opportunities exist for end users' international private lines to interconnect to the PSN in the foreign country where the subject international private line originates. The Commission will be able to ensure that its international settlements policies are not undermined by one-way bypass of the international settlements process.

Initial Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, the FCC's initial analysis is as follows:

Need and purpose of this action: This Notice of Proposed Rulemaking is initiated to obtain comment regarding the proposed application of an equivalency requirement to the interconnection of an end user's international private lines to the U.S. public switched network at the U.S. carrier's central office. The Notice seeks to determine whether such end user international private lines are substantially undermining the Commission's international settlements policies, and, in such a case, whether an equivalency requirement should be applied to end user interconnections and what the most appropriate means of implementing such a requirement would be.

Summary of Proposed Rulemaking

The Third Further Notice of Proposed Rulemaking asks for comment on whether end user interconnections of international private lines occurring at a carrier's central office are undermining our international settlements policies to such an extent that an equivalency requirement should be applied to those interconnected international private lines. Specifically, the Notice asks for comment on whether a U.S. carrier that seeks to interconnect an end user's international private line from a particular country to the public switched network at the U.S. carrier's central office to show that equivalent interconnection opportunities exist at the foreign carrier's central office for an end user's international private line. The Notice also requests comments on whether the International Settlements Policy's filing and notification process would be the most appropriate means of implementing such a requirement, or whether alternative approaches would be more desirable. Finally, the Notice asks those commenters which may object to an equivalency requirement for end user interconnections to comment on whether § 43.51(a)(3)'s notification requirement should be modified to apply to all arrangements entered into by a U.S. carrier for the interconnection of international private lines at a U.S. carrier's central office, including those between a U.S. carrier and an end user.

Ordering Clauses

Accordingly, *It is ordered* that *notice is hereby given* of the proposed regulatory action described above, and that *comment is sought* on these proposals. This action is taken pursuant to sections 1, 4, 151, 154, 201–205, 211, 214, 218–220, 303 and 405 of the Communications Act of 1934, as amended.

For further information on this item, contact Jennifer Warren, Attorney, Common Carrier Bureau, (202) 632–3214.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–31715 Filed 12–30–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 64

[CC Docket No. 92–256; FCC 92–495]

Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: The Commission proposes to apply to GTE Corporation (GTE) the same regulatory framework of Open Network Architecture (ONA) that applies to the Bell Operating Companies (BOCs) for GTE's participation in the enhanced services market. The Commission tentatively concludes that the application of ONA and nondiscrimination safeguards to GTE would yield substantial public interest benefits. Building on the substantial experience gained with the BOCs, the Commission proposes measures to speed GTE's implementation of ONA and nondiscrimination safeguards.

DATES: Comments must be submitted on or before February 1, 1993 and reply comments must be submitted on or before March 3, 1993.

ADDRESSES: Comments and reply comments may be mailed to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John S. Morabito, (202) 632–1290, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposals have been analyzed with respect to the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501–20, and found to impose no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements; and will not increase burden hours imposed on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by that Act.

Summary

1. This is a summary of the Notice of Proposed Rulemaking in Common Carrier Docket 92–256, Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, adopted November 5, 1992 and released December 2, 1992. The full texts of the Commission's decisions are available for inspection and copying, Monday through Friday, 9 a.m.–4:30 p.m., in the FCC Reference Room (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of the Notice of Proposed Rulemaking may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

2. Over the last six years, in the Computer III and ONA proceedings, the Commission has established a comprehensive regulatory framework of nonstructural safeguards, consisting of ONA requirements and nondiscrimination safeguards, to govern the BOCs participation in the enhanced services market. Under ONA, BOCs are required to offer an unbundled set of ONA services to enhanced service providers (ESPs) based on expected

market demand, the services' utility as perceived by enhanced service competitors, and technical and costing feasibility. By requiring the BOCs to offer unbundled network services to ESPs, ONA creates increased opportunities for ESPs to provide, and customers to receive, a wide range of enhanced services. The nondiscrimination safeguards consist of Customer Proprietary Network Information rules, network information disclosure rules, and nondiscrimination reporting requirements. In Computer III, the Commission determined not to make GTE's participation in the enhanced services market subject to ONA requirements and nondiscrimination safeguards. The Commission, however, indicated that it would revisit this issue after ONA had been implemented for the BOCs.

3. While GTE is already a large local exchange carrier, it has recently merged with Contel Corporation. The expanded scope of GTE's operations will increase the benefits that could be obtained by application of ONA to GTE. In addition, application of nondiscrimination safeguards to GTE will effectively guard against possible discriminatory actions. Accordingly, the Commission tentatively concludes that the application of ONA and nondiscrimination safeguards to GTE would yield substantial public interest benefits by bringing to customers and ESPs operating in GTE's service areas the benefits of ONA, and by safeguarding against discrimination.

4. The Commission proposes to apply to GTE the same ONA requirements and nondiscrimination safeguards that apply to the BOCs, but seeks comment on whether modified or reduced requirements should be adopted in light of GTE's geographically dispersed service areas. In particular, the Commission seeks comment on whether application of ONA and nondiscrimination safeguards should be limited to particular GTE service areas, such as large contiguous service areas.

5. Given the substantial experience gained with the BOCs, the Commission proposes measures to speed GTE's implementation of ONA and nondiscrimination safeguards. The Commission seeks comment on two approaches for streamlined review of GTE's proposed initial offerings and its ONA tariffs: (1) simultaneous filing of GTE's proposed initial offerings and its ONA tariffs; and (2) a "staggered" approach under which GTE would file its proposed initial ONA offerings 60 days before its tariffs are filed. The Commission also proposes to streamline implementation of nondiscrimination safeguards by GTE by requiring GTE to implement nondiscrimination safeguards in a manner already approved for one of the BOCs in an ONA plan, unless GTE justifies a different implementation in this rulemaking.

6. In addition, the Commission proposes to preempt state network information disclosure rules applicable to GTE that require initial disclosure at a time different from that specified in the federal network information disclosure rule. Combined with the preemptions applicable to GTE established in the BOC Safeguards Order, 6 FCC Rcd 7571, 7635–36 (1991), this will establish for GTE the same preemptions of state nonstructural safeguards that have been established for the BOCs.

7. The Commission tentatively concludes that GTE must comply with the same ONA and nondiscrimination safeguards applicable to the BOCs, subject to modifications adopted in the rulemaking, within twelve months of the date of release of the Report and Order in this proceeding.

Request for Comments

8. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, room 544, 1919 M Street, NW., Washington, DC 20554. Parties should also file one copy of any document filed in this docket with the Commission's copy contractor, Downtown Copy Center, room 246, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments will be available for public inspection and copying, Monday through Friday, 9 a.m.–4:30 p.m., in FCC Reference Room (Room 239), 1919 M Street, NW., Washington, DC 20554.

Regulatory Flexibility Act

9. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because the proposed rule amendments, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. The proposed rule changes apply only to GTE and its affiliated companies that are considered dominant in their field of operation. The Secretary shall send a copy of the Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*

Ordering Clause

10. *It is Ordered* That, pursuant to the authority contained in sections 1, 4, 201–205, 215, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, and 218, the Notice of Proposed Rulemaking is adopted to give notice of the proposed regulatory changes described above, and that comment is invited on these proposals.

List of Subjects in 47 CFR Part 64

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone, and Computer technology.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–31716 Filed 12–30–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–326; RM–7179]

Radio Broadcasting Services; Brunswick and Waycross, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: This document denies the reallotment of Channel 273C1 from Waycross, Georgia, to Brunswick, Georgia, as requested by Rowland Radio, Inc. See 55 FR 28241, July 10, 1990. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–326, adopted November 30, 1992, and released December 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–31844 Filed 12–30–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[FRA Docket No. PB–9; Notice No. 1]

RIN 2130–AA73

Advance Notice of Proposed Rulemaking; Power Brake Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: FRA requests comment on possible revisions to regulations governing train and locomotive power braking systems that would be designed to achieve safety by better adapting those regulations to the needs of contemporary railroad operations and better facilitating the introduction and use of advanced technologies. This is expected to be a significant rulemaking. Specific topics identified for discussion include the use and design of end-of-train telemetry devices, the air flow method of train brake testing, the additional testing of train air brakes during extremely cold weather, the training of railroad employees to conduct train air brake tests and inspections, computer-assisted braking, and the operation of dynamic brakes on locomotives. FRA solicits suggestions for other matters related to power brakes that should be considered for revision in order to promote safe and efficient train operations. This notice is issued in order to comply with recently enacted legislation, to respond to petitions for rulemaking, and to consider possible revisions to the regulations derived from experience in application of existing standards.

DATES: (1) *Written Comments:* Written comments must be received by March 31, 1993. Comments received after that date will be considered to the extent possible without incurring additional expenses or delay.

(2) *Technical workshops:* A series of technical workshops will be held on the dates and at the locations listed below to provide interested parties the opportunity to comment on specific issues addressed in the ANPRM. FRA requests that only technically-oriented persons with specialized experience in the subject matter represent interested parties at these workshops. Any person wishing to participate in technical workshop should notify the Docket Clerk at the address provided below at least 5 working days prior to the date of the workshop. This notification should identify the workshop in which the person wishes to participate, the party the person represents, and the particular subject matter(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address. FRA reserves the right to limit participation in the workshop of persons who fail to provide such notification.

ADDRESSES: (1) *Written Comments:* Address comments to the Docket Clerk, Office of Chief Counsel, RCC–30, Federal Railroad Administration, 400 Seventh Street, SW., room 8201, Washington, DC 20590. Comments should identify the docket and notice number, and five copies should be submitted. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. The dockets are housed in room 8201 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except holidays.

(2) *Technical Workshops:* Workshops to discuss particular issues will be held at these locations on the following dates:

Kansas City, Missouri on Wednesday, February 17, 1993 at 9 a.m.
Location: Westin Crown Center Hotel, One Pershing Road, Kansas City, Missouri (telephone 816–474–4400)
Topics: Training of employees charged with maintenance and inspection/testing of power brake; and miscellaneous issues

Chicago, Illinois on Tuesday, March 2, 1993 and Wednesday, March 3, 1993 at 9 a.m.
Location: U.S. Army Corps of Engineers, 12th Floor Conference Room, 111 North Canal Street, Chicago, Illinois
Topics: Freight power brake system (*e.g.*, inspections and tests, including cold weather operations and air flow method; and two-way end-of-train devices)

Newark, New Jersey on Tuesday, March 9, 1993 at 9 a.m.
Location: Radisson Hotel—Newark Airport, 128 Frontage Road, Newark, New Jersey (telephone 201–690–5500)
Topics: Train braking procedures and dynamic brakes; and passenger braking systems

The workshops are designed so that technically experienced persons may express their views about train and locomotive power braking systems and those related issues in which they have a personal interest. The workshops will focus upon the questions posed in this ANPRM. These discussions, associated as they are with an advance notice of proposed rulemaking, are intended to be fact finding sessions involving informal give-and-take exchanges between industry and government professionals who are charged with the administration of the power brake regulations on a day-to-day basis. The discussion at each workshop will be focused on the specific topics to which the particular workshop has been dedicated. However, should time remain following conclusion of the workshop discussion, any party wishing to read a prepared statement into the record will be permitted to do so. Parties wishing to provide formal comments on any matter within the scope of this rulemaking are encouraged to do so in writing, not later than the comment closing date announced in this notice.

Persons desiring to participate in any of the workshops should notify the Docket Clerk by writing to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rolf Mowatt-Larssen, Chief, Motive Power and Equipment Division, Office of Safety, RRS–14, room 8326, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–4094 or 202–366–9186), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION:

Introduction

Purpose of Notice

FRA is conducting this proceeding to determine whether to revise or supplement certain Federal regulations regarding air brakes and dynamic brakes. While this ANPRM was being prepared, as part of President Bush's regulatory reform initiative, the United States Congress passed the Rail Safety Enforcement and Review Act (the Act), Public Law No. 102–365 (September 3, 1992), which amends the Federal Railroad Safety Act (FRSA) of 1970 (45 U.S.C. 421, 431 *et seq.*), and mandates certain rulemaking activities. In particular, Section 7 of the Act amends Section 202 of the FRSA by adding a new subsection related to power brake safety which states:

(r) Power Brake Safety.—(1) The Secretary shall conduct a review of the Department of Transportation's rules with respect to railroad power brakes, and not later than December 31, 1993, shall revise such rules based on such safety data as may be presented during that review.

(2) In carrying out paragraph (1), the Secretary shall, where applicable, prescribe standards regarding dynamic brake equipment.

(3)(A) The Secretary shall require 2-way end of train devices (or devices able to perform the same function) on road trains other than locals, road switchers, or work trains to enable to initiation of emergency braking from the rear of the train. The Secretary shall promulgate rules as soon as possible, but not later than December 31, 1993, requiring such 2-way end of train devices. Such rules shall at a minimum—

(i) Set standards for such devices based on performance;

(ii) Prohibit any railroad, on or after the date that is one year after promulgation of such rules, from acquiring any end of train device for use on trains which is not a 2-way device meeting the standards set under clause (i).

(iii) Require that such trains be equipped with 2-way end of train devices meeting such standards not later than 4 years after promulgation of such rules; and

(iv) Provide that any 2-way end of train device acquired for use on trains before such promulgation shall be deemed to meet such standards.

(B) The Secretary may consider petitions to amend the rules promulgated under subparagraph (A) to allow the use of alternative technologies which meet the same basic performance requirements established by such rules.

(C) In developing the rules required by subparagraph (A), the Secretary shall consider data presented under paragraph (1).

(4) The Secretary may exclude from the rules required by paragraphs (1), (2), and (3) any category of trains or rail operations if the Secretary determines that such an exclusion is in the public interest and is consistent with railroad safety. The Secretary shall make public the reasons for granting any such exclusion. The Secretary shall at a minimum exclude from the requirements of paragraph (3)—

(A) Trains that have manned cabooses;

(B) Passenger trains with emergency brakes;

(C) Trains that operate exclusively on track that is not part of the general railroad system;

(D) Trains that do not exceed 30 miles per hour and do not operate on heavy grades, except for any categories of such trains specifically designated by the Secretary; and

(E) Trains that operate in a push mode. Public Law No. 102–365, § 7.

Pursuant to this amendment and FRA's other rulemaking powers under the FRSA, the Locomotive Inspection Act, and the Safety Appliance Acts, this proceeding will address: the use and design of end-of-train (EOT) telemetry devices; the air flow method of train brake testing; the additional testing of train air brakes during extremely cold weather; the training of employees to perform train brake tests and inspections; computer-assisted braking systems; the operation of dynamic brakes on locomotives; and other miscellaneous subjects relating to conventional brake systems as well as comments regarding high speed passenger train brakes.

Provisions governing the use of one-way EOT telemetry devices were incorporated into the Power Brake Regulations in 1986. See 49 CFR 232.13 and 232.19. These devices, at a minimum, have the capability of interpreting rear-of-train brake pipe pressure and of transmitting this information by radio to a receiving unit in the controlling locomotive. All rear units in service are battery operated and also incorporate a rear end marker. See 49 CFR part 221. Optional features include transmission of information regarding rear end motion and battery status. With the exception of those on one railroad, all units operate on the same ultra high frequency (UHF), but each rear unit has a discrete identification code which must be recognized by the front unit before the message is acknowledged.

Since the advent of EOT telemetry devices, technological advances have been made to incorporate "two-way communication" into the system. The two-way EOT device, in addition to the features of the one-way EOT device, has the ability of transmitting from the controlling locomotive an emergency brake application that begins at the rear of the train. This is a desirable feature in event of a blockage in the brake pipe that would prevent the pneumatic transmission of the emergency brake application throughout the entire train. Several interested parties have petitioned FRA to make the use of two-way EOT devices mandatory on all or selected trains, and section 7 of the Act contains fairly detailed specifications for mandatory regulations regarding two-way EOT devices.

The second topic for discussion is the air flow method (AFM) of train brake testing; see the section below headed "Air Flow Method" for a more detailed discussion of the AFM and the testing that has been conducted. After extensive testing on several major railroads, the Association of American Railroads (AAR) petitioned FRA for a waiver of compliance with provisions of 49 CFR 232.12 and 232.13, to permit use of a brake pipe flow indicator to indicate the rate of flow of air through the automatic brake valve to the brake pipe as an alternate to the required leakage test. A conditional waiver was granted to the AAR on December 14, 1989 and amended on January 18, 1990. The AFM of train brake testing has been used safely for a number of years. The time has come to determine if the method should be incorporated in the regulations and thus, be legally available to all railroads. The issue also arises whether there are situations in which monitoring of air flow or gradient should be required while trains are underway, as required in conditions attached to the air flow waiver, even though the AFM is not elected as the means of testing at the initial terminal.

The third concern to be addressed in this proceeding is whether there is a need for additional testing of train air brakes during extremely cold weather. As a result of the Montana Rail Link (MRL) accident at Helena, Montana on February 2, 1989, the National Transportation Safety Board (NTSB) recommended that the Road Train and Intermediate Terminal Train Air Brake Tests, 49 CFR 232.13, be amended to require additional testing of a train air brake system when operating in extremely cold weather, especially when the feed valve setting is changed and the train is to be operated in mountain grade territory.

The fourth subject for consideration at this proceeding is the qualifications of persons performing train brake tests and inspections. Federal regulations require that inspection and testing of train brakes be performed by a "qualified person" but allows the railroads to designate who is qualified, except if a carman is on duty, he alone is considered qualified. 49 CFR 232.12(a). As railroads reduce their work force to be competitive in the transportation market, train crews are increasingly called on to perform the required tests and inspections. FRA has concerns whether or not these persons have been properly trained to perform such duties.

The fifth topic of discussion will be electronically controlled braking systems, including "blended" brakes, and computer-assisted braking/speed control similar to such brake systems as employed on Amtrak's Northeast Corridor. All such systems rely on feedback sensors to monitor the integrity of the braking system. FRA needs to investigate the overall reliability of these braking systems, with particular emphasis on the reporting sensors, and to determine if regulatory revisions are appropriate to facilitate use of these advanced technologies.

The penultimate area of concern for discussion, relates to the operation of dynamic brakes on locomotives. Currently, the only reference to dynamic brakes in the Federal regulations is contained at 49 CFR 229.13, "* * * [i]f a dynamic brake or regenerative brake system is in use, that portion of the system in use shall respond to control from the cab of the controlling locomotive." FRA intends to determine if regulations are necessary regarding the application and maintenance of dynamic brakes. In addition, FRA will consider the necessity of displaying the dynamic brake status of trailing locomotives in the controlling locomotive.

In the past, FRA has received suggestions to improve railroad power brake safety in a number of areas. Some of these include interpretations of the initial terminal air brake test requirement, simplified procedures for making the leakage test, maintenance and test procedures for freight brake equipment, and the "two hour" guideline for keeping a train's brake system charged. There have been many changes in railroad power brakes and railroad operations since the AAR's rules, standards, and instructions were incorporated into FRA regulations. FRA solicits comments relative to any changes, be they additions, alterations, or deletions, deemed necessary to bring the regulations in step with today's operating environment. Furthermore, FRA solicits comments regarding the technological advances made in the area of high speed passenger train brakes, especially in the areas of electro-pneumatic braking systems, electronic equipment, and speed reduction systems.

Accident History

FRA has compiled a ten-year history of rail equipment accidents/incidents that railroads have reported to FRA as having been caused, at least in part, by brake problems. See 49 CFR part 225 and Table 1. These causes have been divided into the following six categories: Air hose burst or separated, brake rigging problems, undesired emergency brake applications and sticking brakes, brake pipe problems, hand brake problems, and other brake components. In 1982, there were a total of 129 brake-related accidents costing $6,722,451. There has been a steady decline since that time, and in 1991 there were 56 such accidents costing a total of $3,559,640. Least squares trend lines for each category show a decrease over the ten-year period based on annual train miles. The cost of these accidents per million train miles has decreased in all categories except that of undesired emergency brake applications and sticking brakes. Data used in the above analysis are included in the appendix to this Notice.

TABLE I.—BRAKE RELATED ACCIDENT HISTORY

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	TOTAL
Brake Valve Malfunction (UDE & Sticking)	15	23	15	8	14	11	17	9	15	11	138
	$564,790	$741,112	$620,674	$169,774	$2,047,831	$2,205,875	$695,255	$769,633	$572,760	$442,830	$8,830,534
Brake Pipe Broken or Obstructed	4	2	5	4	3	1	0	3	2	2	26
	115,339	149,268	581,682	106,362	23,673	9,500	0	92,086	222,700	384,421	1,685,031
Air Hoses Uncoupled or Burst	22	16	18	25	19	17	19	12	9	6	163
	2,225,816	1,418,051	2,546,030	2,479,558	1,160,077	1,148,055	1,571,626	468,388	472,980	687,326	14,177,907
Rigging Down or Dragging	42	17	16	17	13	13	24	14	15	17	188
	2,094,763	789,018	675,879	571,875	445,305	1,141,617	1,263,067	1,402,860	502,725	1,574,176	10,461,285
Other Brake Components Damaged	20	12	10	20	15	7	5	17	11	10	127
	1,323,056	1,714,013	224,164	712,534	661,296	118,193	723,690	1,557,943	482,376	288,034	7,805,299
Hand Brake Defects	26	16	10	20	0	8	11	8	2	10	111
	398,687	355,211	116,275	651,890	0	725,240	610,050	487,512	78,000	182,853	3,605,718
Total Reports	129	86	74	94	64	57	76	63	54	56	753
Total Damage	$6,722,451	$5,166,673	$4,764,704	$4,691,993	$4,338,182	$5,348,480	$4,863,688	$4,778,422	$2,331,541	$3,559,640	$46,565,774

Comment is requested regarding the significance of this data, elements of societal and railroad cost not included in the reported data, and factors to be considered in evaluating the risk of a future catastrophic accident involving failure of train or locomotive brakes.

Discussion

I. EOT Telemetry Devices

In 1986, § 232.13 of FRA's power brake regulations was modified to permit the use of an EOT device as an alternate method of determining the application and release of the brakes at the rear of a freight train during a road train and intermediate terminal air brake test. At that time, Section 232.19 was added setting forth the requirements for the design and testing of EOT devices. The regulation sets out the basic design of the front and rear units, the performance requirements of the units, the information required to be transmitted and received by the units, and the inspection and testing of the devices. 49 CFR 232.19.

In 1986, FRA concluded that mandating the installation of a two-way EOT device was not warranted. At that time, cabooseless trains operating without an EOT device lacked any ability to initiate an emergency brake application from the rear of the train. Such operations had not demonstrated a need for the EOT device to do so. Also, at that time EOT devices with two-way capability were not commercially available. In addition, two-way capability requires two-way signal transmission, which sharply increased the cost of the device. However, FRA made a public commitment in the preamble to the regulation of the agency's intent to monitor developments in EOT device technology and to review the subject periodically. 51 F.R. 17300, 17301 (May 9, 1986).

In the relatively short time since that 1986 evaluation, significant advances have been made in the development of two-way EOT devices, and they are commercially available in the marketplace from two manufacturers. In fact, two-way communication was mandated in Canada in 1987 as a condition for elimination of cabooses. FRA has received recommendations from the NTSB and petitions from the United Transportation Union, the Brotherhood of Locomotive Engineers, the Oregon Public Utility Commission, the Washington Utilities and Transportation Commission, and the Montana Public Service Commission to require two-way EOT devices on all cabooseless trains operating in certain territories. These parties cite to several incidents where brakes could not be applied on the rear portion of trains from the controlling locomotives due to closed angle cocks, kinked air hoses, defective brake valves, or some other obstruction in the brake pipe on or near the lead locomotive. The parties also point to several incidents involving train separation where serious damage or danger was involved.

Among the incidents cited to by the parties were the following:

- On January 7, 1984, near Medicine Hat, Alberta, a Canadian Pacific train collided with a yard locomotive and derailed as a result of the air brakes being inoperative due to a kink in the air brake hose at the lead locomotive, causing $25 million in damages.
- In October of 1986, near Casa Grande, Arizona, a Southern Pacific Transportation Co. train separation occurred due to a trespasser's closing the angle cocks and uncoupling the train, causing the rear section of the train to strike the front section at 42 mph and kill the trespasser.
- On February 2, 1989, in Helena, Montana, an MRL train rolled free after a spontaneous release of the brakes, causing an explosion and fire involving hazardous materials. (Note: It is FRA's technical judgment that a two-way EOT device could not have prevented this accident, since at the time equipment ran away there was insufficient pressure in the trainline to have initialed an application of the brakes through venting of the trainline to atmosphere. Furthermore, when the train crew became aware that the parked equipment was moving on the descending grade, a two-way EOT device could not have been operated from the cab of the locomotive due to the limited effective transmission capability of the equipment.)
- On March 26, 1989, near Picqua, Ohio, a CSX Transportation train had 121 cars without brakes due to a kink in the air brake hose on the fourth car from the lead; as a result, the train passed through two restrictive signals and, once put in emergency, required three miles to stop.
- On June 6, 1989, near Clinton, Montana, an MRL train required six miles to stop after being placed in emergency and had to enter a 20-mph siding at 45 mph due to a closed angle cock between the first and second car that rendered the air brakes on the rest of the train inoperative.
- On April 30, 1990, near Spokane, Washington, a Burlington Northern train separation occurred in which 100 cars became detached from the train and ran away, resulting in a collision with another train.

In most all the incidents cited by the parties, the parties believe that the actual damage incurred or the potential damage to life and property could have been avoided had the trains involved been equipped with two-way EOT devices. In some cases, compliance with existing regulations could have disclosed the problem and proper steps could have been taken to avoid an incident.

FRA has also received a petition from a locomotive engineer concerning the functioning of the front end unit of one-way EOT devices. The engineer expressed concern over the accuracy of the odometer with which these devices are equipped, which allow the engineer to determine the location of the rear of the train.

Furthermore, as previously discussed, Section 7 of the act, which amends the FRSA by adding a new subsection dealing with power brake safety, mandates that the DOT Secretary promulgate rules requiring two-way EOT devices. Section 7, paragraphs (3) and (4) of the Act set out various minimum requirements that any promulgated rule must contain. The Act also explicitly excludes certain trains from the requirements of any rule mandating the use of two-way EOT devices. The trains excluded by the Act are: trains that have manned cabooses; passenger trains with emergency brakes; trains that operate exclusively on track that is not part of the general railroad system; trains that do not exceed 30 miles per hour and do not operate on heavy grades, except for any categories of such trains specifically designated by the Secretary; and trains that operate in a push mode. Consequently, in considering the following questions and issues, the provisions of the newly enacted Rail Safety Enforcement and Review Act should be kept in mind.

In the course of this proceeding, FRA will address the following specific issues or subjects:

(1) With the exception of trains excluded by statute, should operating two-way EOT devices be mandatory on:

(a) All trains?

(b) All heavy tonnage trains? (How should that term be defined?)

(c) All long trains? (How should that term be defined?)

(d) All cabooseless trains?

(e) All cabooseless trains operating in certain environments, *e.g.*, mountainous territory or cold weather? If so, what ruling grades, for what distance, and what temperatures should be considered?

(f) To what extent should FRA exercise its prerogative to designate categories of trains authorized to operate not less than 30 mph?

(2) If two-way communication is not necessary on all trains, are present regulations for one-way devices adequate? Are the calibration requirements for the one-way devices adequate? Is the information provided by the one-way devices sufficient?

(3) What are the operational characteristics of devices currently available and what kind of performance standards should be established for their operations?

(a) What is the battery life over the operating temperature range for the two-way devices? To what extent is it influenced by the number of functions the device performs? Should a battery status check be included in any air brake inspection?

(b) Over what distances are front-to-rear communications effective in actual field conditions? To what extent are such communications affected by topography and buildings? What issues have been encountered with respect to loss of communication with respect to one-way EOTs? Two-way EOTs?

(4) How should enroute failures be addressed?

(5) What additional information should be transmitted by two-way communication devices from the rear of the train to the front of the train?

(a) Market light status?

(b) Train motion status?

(c) Battery status?

(d) Transmission and reception capability status?

(6) What additional information should be transmitted by two-way communication devices from the front of the train to the rear of the train?

(a) Emergency brake application?

(b) Transmission and reception capability status?

(7) How much more is two-way EOT equipment expected to cost than one-way EOT equipment?

(a) What would be the cost of replacing existing units with completely new two-way units?

(b) What would be the cost of retrofitting existing equipment with two-way equipment?

(8) How many existing systems would have to be upgraded?

(9) How many additional systems would be required to equip trains as outlined in Question 1?

(10) What safeguards should be built into the two-way system to forestall vandalism (undesired emergency)?

(11) What additional maintenance requirements are needed?

(12) What are the anticipated maintenance costs of two-way EOT systems?

(13) What is the operating experience of railroads currently using two-way EOT devices? Please provide the approximate number of train movements, time period involved, and any examples of cases in which the device has been activated for the purpose or with the effect of avoiding a probable accident.

(14) How does extremely cold weather affect the operation of the devices and battery life?

(15) What is the weight of the rear units?

(a) One-way unit?

(b) Two-way unit?

(16) It should be noted that a potential hazard in the use of two-way EOTs is the risk that crews will place excessive reliance on that capability to the detriment of attention to proper train air brake procedures and alertness to the current condition of the train air brake system. This risk may be particularly acute in situations where a block of cars at the rear of the train is set out on a grade during switching operations. What training should be provided to train crews to ensure that they are aware of requirements for setting out cars on grades, use of hand brakes, and the technical limitations of two-way EOT devices?

II. Air Flow Method (AFM)

The operating experience of the railroads using the AFM of train air brake testing along with that of other interested parties will be considered to determine if this method of train brake testing should be incorporated into 49 CFR part 232 as an alternative means of compliance and whether any element of that method should be applied more broadly as a requirement for power brake inspections or conduct of train operations. Among the tests and inspections of the air brake system required by the regulations is the leakage test, which quantifies the integrity of the brake system. Sections 232.12 and 232.13 require, in part, the following brake pipe leakage test. Once the brake pipe is charged, the brakes are then applied by making a brake pipe reduction, and the supply of air to the brake pipe is stopped by cutting out, or lapping, the automatic brake valve. Finally, the brake pipe leakage is read from the locomotive brake pipe gauge. For successful passage of the test, the leakage must not exceed five pounds per square inch (psi) per minute. 49 CFR 232.12, 232.13. Leakage in the brake system affects train handling, and thus, FRA rules have for many years established the maximum allowable brake pipe leakage and the maximum allowable gradient (the maximum differential in brake pipe pressure between the head end of the train and the rear end of the train). The relative uniformity achieved by maintaining leakage within the prescribed five psi limit and keeping the gradient at the maximum of 15 psi produces the desired results for efficient and safe train handling.

An alternative to the leakage test exists in the air flow method (AFM) of train air brake testing. By monitoring the rate of air flow through the automatic brake valve to the brake pipe by means of a brake pipe flow indicator, the locomotive engineer can be assured of the ability of the automatic brake valve to control the brake system. On automatic brake valves with the pressure-maintaining feature, the brake pipe pressure is maintained at the desired level against the effects of brake pipe leakage. Thus, the brake system leakage is offset sufficiently if the rate of flow does not exceed a given level. Based on tests conducted in Canada and the United States, it has been determined that if the gradient does not exceed 15 psi and the air flow rate is maintained at or below 60 cubic feet per minute, the brake system is sufficiently stabilized and within acceptable limits for safe and efficient train handling. Extensive testing has demonstrated that the limits of a 60 cubic-feet-per-minute air flow rate and a 15-psi gradient are practical and safe requirements for the qualification of train air brake systems.

The AFM of train qualification is a more comprehensive test than the present leakage test. The leakage method only measures the amount of leakage from the brake and branch pipes, whereas the AFM tests the entire brake system including the reservoirs and control valves. In addition, the leakage method does not test the capability of the pressure-maintaining feature of the 26L brake equipment. The AFM, on the other hand, tests the brake system just as it is operated, with the pressure-maintaining cut in.

The AFM represents a much more discrete method of identifying the acceptable leakage rate relative to train length. While it does not measure the leakage rate, there is a demonstrable correlation between the leakage rate and train length for a given stabilized rate of flow into the brake pipe. Importantly, for the purpose of determining the capability of the brake system to perform as intended, it is only necessary to know that the rate of air flow has stabilized at 60 cubic feet per minute or lower.

Railroads have used brake pipe flow indicators for many years. These devices have been of great assistance in train handling since the 1950s. The device, viewed by the locomotive engineer, presents a dial face with numbered markings and an indicator needle. The numbered markings represent a range of air flow in cubic feet per minute. During the first charging of the brake system, the indicator needle will move to the extreme right, indicating a high rate of air flow while the trainline is being charged. As the system becomes charged, the indicator needle will move to the left as the rate of flow decreases. When the brake system is fully charged to the pressure preset by the regulating valve, the air flow will stabilize at the level necessary to maintain brake pipe pressure at the desired level by replacing the air lost through leakage in the brake system.

In 1975, the Canadian railroads (Canadian National and Canadian Pacific) became involved in examining the possibility of using the AFM for qualifying train air brake systems. After several years of extensive testing, which used the expertise of the air brake manufacturers, it was determined that the air flow system was acceptable. In 1984, the Canadian government adopted the air flow system as an alternative to the leakage system and has completed rulemaking.

In 1981, FRA became involved with the AFM of train air brake qualification and authorized testing of trains using this method within the United States. Between 1981 and 1988, FRA granted test waivers to six major United States railroads. FRA monitored the tests being performed by the railroads and reviewed the test data. Approximately 200,000 train air brake tests were conducted by the AFM, and there was no evidence of train-handling problems.

In 1988, the AAR petitioned for a waiver of compliance with the provisions of 49 CFR 232.12 and 232.13 to permit the AFM as an alternative to the brake pipe leakage test. See 54 FR 5195 (Feb. 1, 1989). Such authority was granted to the AAR on December 14, 1989, with the following stated conditions:

1. Each controlling locomotive on a train qualified by the AFM shall be provided with an operational air flow indicator;

2. Participating railroads shall provide an operational end of train device (see title 49 CFR, 232.19) on all trains except transfer and yard trains with movements not exceeding 20 miles;

3. The AFM will apply only to trains using locomotives that are equipped with an air flow indicator that conforms with FRA's conditions, AAR specifications and calibration procedures, and number 26L freight locomotive air brake equipment;

4. When the AFM is used for train air brake qualification, the air brake system shall be charged to within 15 psi of the highest locomotive feed valve pressure used by that railroad and the air flow shall not exceed 60 cubic feet per minute (CFM);

5. The air flow indicator must be calibrated for accuracy at period[ic] intervals not to exceed 92 days;

6. The air flow indicator shall be clearly visible and legible in daylight and darkness from the engineer's normal operating position;

7. The air flow indicator shall be clearly and uniformly marked to indicate direct reading of air flow in CFM on the indicator face in 5 CFM increments from 0 to 100 (this condition was amended on January 18, 1990 by replacing "5 CFM increments" with "10 CFM or less increments");

8. The air flow indicator calibration test orifices shall be calibrated at temperatures of not more than 20 degrees Fahrenheit;

9. When a train qualified by the AFM is in operation and experiences an increase in brake pipe air flow and/or an increase in brake pipe gradient and the movable pointer does not return to the limits established in the initial terminal train air brake test within a reasonable time, the train crew shall stop the train for inspection and repair leaks, if detected. If unable to make repairs the crew should arrange to set out defective cars and/or proceed with due caution to the next location where corrective action can be taken;

10. All participating railroads shall provide FRA a list of locations where calibrations will be performed and of locations which will be provided with test orifices. Changed, deleted, or additional locations will be reported to FRA within 92 days; and

11. All personnel involved with the AFM of testing train air brake systems and operating such trains must be given training and be aware of and understand the conditions of this waiver

In this proceeding, FRA will determine if the operating history of the AFM of train air brake testing warrants amendment of 49 CFR part 232 to include the AFM as an alternative to the leakage test. The following are some of the questions and issues to be addressed:

(1) What has been the operating experience of railroads now using the AFM? Has the AFM had a noticeable effect on undesired emergency brake applications, on sticking brakes, or on stopping distance?

(2) Have there been instances of increased flow or gradient where it was necessary to take remedial action as outlined in Condition 9? What action was taken?

(3) What is the reliability of the air flow indicators?

(4) Have there been any problems with calibration procedures?

(5) What is the cost of the AFM?

(6) If the AFM is superior to the current regulatory baseline as a result of its ability to test the entire system, should it be required in lieu of a leakage test? If so, what would be the cost of equipping locomotives with complying air flow meters?

(7) As allowed under the current waiver, the AFM extends to actual operation of the air brake system during train operations, not merely the inspection of the system at an initial terminal. This approach takes into account certain changes in the condition of the air brake system over journeys of up to 1,000 miles through varying climactic conditions. Availability of the air flow meter and the requirement that air flow be monitored provide significant additional information on the status of the air brake system. Should elements of the AFM pertaining to actual train operation, as prescribed in the current waiver, be incorporated into the regulatory requirements? Should such incorporation be limited to particular types of operations? What would be the cost?

III. Cold Weather and Steep Grade Testing

This proceeding will also investigate the issue of additional testing of train air brakes in extremely cold weather, especially in mountainous territory. Although the air brake components on railroad equipment must, by design, operate satisfactorily over a temperature range of −40°F to 150°F, there are no specific tests to check the performance of train brake systems over these extremes. Cold temperatures affect the train air brake system by freezing moisture in the trainline, thickening valve lubricants, and contracting or shrinking sealing materials. This can result in increased brake pipe leakage, inconsistent valve operation, or an undesired release of the brakes. Considerable progress has been made in the last few years to reduce the amount of leakage. Welded piping, more resilient rubber seals, and improved hose coupling designs and clamps have greatly reduced the negative effects of cold temperatures.

In the MRL accident at Helena, Montana, on February 2, 1989, the NTSB and FRA both agree that the primary cause of this accident was failure to comply with already existing requirements of carrier rules and Federal regulations; in particular, the train crew's failure "to properly secure their train by placing the train brakes in emergency and applying hand brakes when it was left standing unattended on a mountain grade." This omission constituted a violation of 49 CFR 232.13(f), which states that:

> (f) The automatic brake valve must not be depended upon to hold a locomotive, cars or train, when standing on a grade, whether the locomotive is attached or detached from cars or train. When required, a sufficient number of handbrakes must be applied to hold the train before the air brakes are released * * *.

Strict adherence to already existing Federal and carrier-mandated requirements would have prevented this accident.

Although FRA maintains that present train brake test procedures are adequate for all conditions encountered in the United States, FRA welcomes all comments in this area. If the record shows that additional test procedures are required when certain conditions exist, these revised or additional procedures must be defined, and the conditions under which they apply must be delineated. Where steep grades and cold weather exist, additional braking procedures may need to be developed. FRA is aware that certain braking practices exist that may not be totally safe. Examples of these practices are: "Feed valve braking," in which application and release of the train brake are controlled by the feed valve rather than the brake valve handle, and use of the "Passenger" position of the 26C brake valve to overcome any leakage from the equalizing reservoir. If proper care is not exercised, both of these practices can lead to the unintentional release of the train brakes. FRA has received a recommendation from the NTSB and petitions from the Brotherhood of Locomotive Engineers, the United Transportation Union, and the Montana Joint Rail Labor Legislative Council to require additional train air brake system testing in extremely cold weather and mountain grade territory. These parties cite concerns regarding existing practices of some railroads in these areas and the general problem of assuring sufficient brake pipe pressure during train operations in extremely cold weather and on steep, descending grades.

In the course of this proceeding, FRA will address the following issues:

(1) Is there a need for additional testing of train air brakes on heavy tonnage trains in extremely cold weather, especially in mountain grade territory?

(2) Is there a need for additional testing of train air brakes on long trains in extremely cold weather, especially in mountain grade territory?

(3) What specific additional tests should be required, such as a functional test wherein the brakes must remain applied, as evidenced by the pistons being extended, for a certain length of time?

(4) At what temperature should the additional air brake tests be required?

(5) At what location should this temperature be measured?

(6) Should anticipated falling temperatures due to colder weather and higher elevations be considered?

(7) How should "mountain grade" territory be defined?

(8) Should brake pipe flow indicators be required?

(9) What is the cost of any additional requirement sought to be imposed?

(10) Should "feed value braking" and the use of "Passenger" position of the 26C brake valve in freight service be prohibited?

(11) Should a running test, as detailed in 49 CFR 232.16 be required of freight train air brakes in mountain grade territory?

(12) Should effective dynamic brakes be required for trains operating in mountain grade territory?

IV. Training of Test and Inspection Personnel

Historically, carmen have been employed by the railroads to inspect trains during air brake tests to ensure that the brakes apply on each car, that angle cocks are properly positioned, that piston travel is correct, that brake rigging does not bind or foul, and that all parts of the brake equipment are properly secured. In 1982, the present language of 49 CFR 232.12(a)(1) was adopted as follows:

> (a)(1) Each train must be inspected and tested as specified in this section by a qualified person at points—* * *. Where a carman is to perform the inspection and test under existing or future collective bargaining agreement, in those circumstances a carman alone will be considered a qualified person.

Rather than specify that one craft must perform the inspection and test, FRA concluded that the basic requirement for ensuring safety is that the person performing the initial terminal test and inspection must be a qualified employee, possessing the knowledge and ability to inspect the train air brake system for compliance with the regulations. An increasing number of initial terminal test and inspections are being conducted by train crews. FRA has concerns whether or not all personnel performing these duties are truly qualified.

Issues to be addressed in this area will include the following:

(1) Does each railroad maintain a list of persons qualified to perform train air brake tests and inspections?

(2) Do train crewmembers receive formal training on train air brake tests and inspections?

(3) Are the train crewmembers tested on their knowledge before being qualified?

(4) Are the qualified persons subject to periodic testing on train air brake tests and inspection?

(5) Should the American Short Line Railroad Association (ASLRA), AAR, or FRA provide minimum training material including videos, and test requirements for certification of inspectors when inspecting for compliance with Federal regulations?

(6) What should be the required mechanical training?

(7) Should AAR, ASLRA, or FRA certify inspectors for inspecting for compliance with Federal regulations?

(8) At what time intervals should recertification be required?

V. Electronic Brake Systems

Railroad power brake systems are moving into the computer age, and FRA needs to investigate how these systems should be regulated to maintain the same level of safety as conventional power brakes. It is acknowledged that electronic braking provides increased flexibility and utilization of train braking and causes less wear and tear on the brake equipment. Recently, several innovative electronic brake systems have been adopted in train service that meet present Federal regulations; however, the regulations may be silent in certain areas that need to be addressed.

One of these new innovations is blended brakes. These are primarily a passenger locomotive brake system that automatically blends the dynamic brake with the air brake on the locomotive or power unit only. To maintain maximum retardation on the locomotive, the full capability of the dynamic brake is utilized with supplemental pneumatic braking. At high speeds where the dynamic brake is least effective, maximum air braking is applied. As the dynamic brake retarding force increases, the pneumatic braking is decreased so that a relatively constant retardation is maintained throughout the train stop. In order to be fully effective, blended brakes require (i) a brake event recorder that will record an operable dynamic brake, (ii) feedback sensors to monitor the dynamic brake retardation, (iii) and a blending valve to modulate the pneumatic braking and other pertinent brake functions. Use of blended dynamic/pneumatic brakes is essential for a dependable and efficient brake system for high speed trains. Furthermore, where the weight of a locomotive is a relatively high percentage of the total train weight, a failure of blended brakes during high speed operation will have an adverse or serious effect on stopping distance.

Another innovation in braking is the locomotive speed limiter in use on Amtrak's Northeast Corridor. This system integrates the train speed with signal indications to give the engineer a display of the time remaining to apply the brakes to stay within the speed limit. If the engineer takes no action, the system will apply the brakes automatically and stop the train. All locomotives, including freight locomotives operating on the Northeast Corridor tracks, are equipped with this feature. The locomotive speed limiter is an add-on feature to the existing cab signal system.

A third innovation is microprocessor-controlled brakes. These systems have been installed on a limited number of locomotives operating in the United States. These systems employ an onboard computer to translate the engineer's braking command (handle movement) to control the train brake pipe pressure and the locomotive brakes. These functions are performed by pneumatic valves connected by pipes on a conventional locomotive brake system. The microprocessor, with no moving parts, provides a more reliable system in day-to-day service.

For over one hundred years, the basic concept of the automatic air brake has been its "fail-safe" feature. FRA must be assured these new systems meet this criterion. In the course of this proceeding, FRA will address the following issues or subjects:

(1) In each of the foregoing systems, what occurs in event of a power failure in the system?

(2) What is the reliability of the various sensors in the systems? Does the system know when a sensor fails, and what action is taken?

(3) In the initial terminal train air brake test, required by § 232.12(d)(1), an inspection must be made to determine that each brake is applied and that piston travel is correct. Primarily on disk brake applications, the brake cylinders are located in an area inaccessible for visual inspection; instead, a carside indicator (a light or an indicating piston) shows the status of the brakes (applied or released) to the inspectors without their actually observing the brake cylinder. Is this a reliable system for determining the condition of the train brakes?

(4) Can or should sensors be provided that would indicate to the engineer when disk brake pads have worn to condemning limits?

(5) Should sensors be used to assist in brake tests in determining proper piston travel?

(6) Should sensors be used to assist in brake tests in determining whether brakes are applied by measuring the force between brake pad or shoe and the wheel?

(7) Can and should sensors be provided that are capable of indicating to the engineer that piston travel is beyond allowable limits?

(8) What restrictions are or should be placed on trains with inoperative blended brakes?

(9) What maintenance is required of non-pneumatic devices in the foregoing systems?

(10) How is or should the computer program (software) be tested on each locomotive? Can or should such tests be performed on a daily basis?

(11) What testing procedures are or should be required when replacing system components?

VI. Dynamic Brakes

This proceeding will also inquire into concerns relative to dynamic brakes on locomotives. Dynamic brakes were developed as a "free" by-product of the diesel-electric drive train. By engaging the dynamic brake, the normally powered traction motors on each axle are changed to generators, and the power generated is dissipated through resistance grids. The effect is similar to that of shifting an automobile to a lower gear when descending a steep grade. The additional hardware needed to outfit a locomotive with dynamic brakes includes the grids and the controls and switches.

Historically, dynamic brakes have been applied to locomotives at the individual railroad's option. The primary selling point of dynamic brakes has been to save on freight car brake shoe wear. The dynamic brake is also useful in controlling train slack in lieu of using the locomotive independent brake. Furthermore, use of the dynamic brake in controlling train speed in lieu of power braking, where the train brake is applied with the locomotive under power, is a major factor in fuel savings. In recent years, the possibility of an undesired emergency when the automatic brake (train brake) is applied or the possibility of sticking brakes has led to more use of the dynamic brake over the train brake.

Most railroads consider the automatic brake to be the basic brake, capable of controlling the speed of the train under all conditions. This is consistent with requirements of the Safety Appliance Acts (45 U.S.C. 1 *et seq.*) and implementing regulations, which mandate power braking systems that allow the engineer to control the speed of the train. An inoperative dynamic brake is not considered an impairment to train braking. An engineer must be prepared to operate the train with air brakes alone at any time since the dynamic brake may fail at any time without advance signs of deterioration. This is not meant to imply that the dynamic brake is unreliable when used for appropriate purposes; however, a dynamic brake's time of failure is usually while it is in use. Thus, a fully functioning dynamic brake at the time of departure may not be fully operational when called upon for retardation.

The dynamic brake is unique in that the locomotive must be moving before any retarding force is generated. It is therefore not correct to speak of "stopping" a train through use of the dynamic brake. In addition, the amount of retarding force is dependent upon the speed of the locomotive. The standard dynamic brake has maximum retardation at approximately 25 MPH and fades both above and below this speed. To better utilize the brake, an extended range version was developed that provides maximum retarding force between approximately 8 and 25 MPH, with a rapid decrease below 8 MPH and a gradual decrease above 25 MPH. A recent improvement is the "high capacity" dynamic brake, which provides approximately 30% more retarding force than the standard dynamic brake.

Railroad operating rules usually specify a maximum number of dynamic-braked axles in a locomotive consist to minimize the effect of the trailing train's jackknifing on sharp curves or turnouts. When the dynamic brake is used in conjunction with the air brake, a fixed air brake application is made, and the dynamic brake is varied to account for changes in the grade. During service braking, the air brakes on the locomotives are automatically released by the dynamic interlock magnet valve to avoid excessive retarding force (wheel sliding) on the locomotive. The most common practice during an emergency air brake application is to automatically release the dynamic brake and allow the air brake to apply. Several railroads have recently changed their priorities and now specify that the dynamic brake not be released in an emergency.

As a result of the Southern Pacific Transportation Company accident at San Bernardino, California on May 25, 1989, the NTSB made the following two recommendations to FRA concerning dynamic brakes:

1. Study, in conjunction with the Association of American Railroads, the feasibility of developing a positive method to indicate to the operating engineer in the cab of the controlling locomotive unit the condition of the dynamic brakes on all units in the train.
2. Revise regulations to require that if a locomotive unit is equipped with dynamic brakes that the dynamic brakes function.

In the San Bernardino accident, a train consisting of four locomotives, 69 loaded hopper cars, and two helper locomotives derailed while descending uncontrolled on a 2.2% grade. The primary cause of the accident was the train's being approximately 50 percent over the weight reported to the train crew. A secondary cause of the accident was the train had fewer operable dynamic brakes than the engineer expected. The engineer thought that the lead locomotive and one other locomotive in the front consist, along with both helper locomotives, had fully functioning dynamic brakes. In fact, one helper locomotive had the dynamic brake cut out, and it is questionable whether the dynamic brakes on two of the lead consist locomotives were fully functional. If the train crew had known the correct weight of the train and the actual status of the dynamic brake on each locomotive, the train would probably have been handled differently on the grade. Formulated differently, it may be contended that this accident was caused, in part, by excessive reliance on dynamic brakes as a means of controlling the speed of the train in its descent through a difficult grade.

As should be evident from the preceding discussion, FRA is confronted with issues not limited to equipping locomotives with dynamic brakes, development of standards for dynamic brakes, or implementation of technologies to advise the engineer concerning the condition of dynamic brakes. Rather, it is important to consider whether the current emphasis on use of dynamic brakes to achieve fuel efficiency and avoid wear on power brake components has resulted in issuance of train handling instructions that can lure the engineer into a trap in those situations where dynamic brakes must be relied upon to control speed within a zone of safety.

FRA is also aware that, particularly in passenger service involving frequent stops and rapid deceleration, use of dynamic braking can also be of considerable assistance in limiting thermal inputs into locomotive and car wheels. Excessive reliance on tread braking can result in thermal cracks in the wheel tread, flange, or rim which may progress to a catastrophic failure of the wheel due to high temperature stress cycling of wheels rims. The same phenomenon occurs in freight operations, particularly where sticking brakes go undetected. In either case, eventual wheel failure may result with serious consequences. Although advances in wheel design and metallurgy have greatly reduced the susceptibility of wheels to failure from thermal abuse, the problem has not been completely solved. Consideration of dynamic braking should thus include the indirect, as well as the direct safety impacts of emphasis on use of dynamic brakes.

In the course of this proceeding, FRA will address the following specific issues or subjects:

(1) What means are currently available to the locomotive engineer by which to determine the condition of the dynamic brake on each locomotive?

(2) What equipment could be added that would provide the engineer with information about the status of the dynamic brakes on trailing locomotives? In answering this question, consideration should be given to new locomotives, retrofitting existing locomotives, operational status indicators, and actual current readings.

(3) How much will implementation of the various proposals discussed in item (2) cost?

(4) What is the reliability of the dynamic brake?

(5) Does a dynamic brake's reliability vary with the age of the locomotive?

(6) What are the most prevalent failures of the dynamic brake?

(7) Is it feasible to perform a standing test of the dynamic brake?

(8) Should the regulations dictate the precedence of dynamic or emergency braking on locomotives and if so, what should these regulations require? Should train handling instructions for locomotive engineers include warnings concerning reliance on dynamic brakes at or near the margin of safety?

(9) Should rheostatic brakes be used versus dynamic brakes with grids?

(10) Is it possible to improve the reliability of dynamic brakes? If so, what improvements should be made?

(11) Should a running test of the dynamic brake be required?

(12) Should any new regulations governing dynamic brakes be included in 49 CFR part 229, Railroad Locomotive Safety Standards, or in 49 CFR part 232, Railroad Power Brakes and Drawbars?

(13) Should FRA encourage or require equipping of locomotives with dynamic brakes?

(a) What would be the cost of such a requirement?

(b) What benefits would be achieved (redundant braking capacity, reduction in thermal inputs into locomotive or car wheels)?

VII. Integration of Locomotive and Train Braking Issues

The current pattern for Federal power brake regulations derives from the Power or Train Brakes Safety Appliance Act of 1958 (Pub. L. 85–375, 45 U.S.C. 9), which required almost verbatim adoption of relevant rules, standards and instructions of the Association of American Railroads. Those standards are tied to specific technology and deal only with certain aspects of design, maintenance, inspection and testing. The 1992 safety amendments and the list of issues found in this notice continue to take a piecemeal approach to the issue of locomotive and train brakes.

Several factors indicate that we should examine what combination of technology and train handling practices would best serve the ends of safety during the coming years. These factors include: Growth of average train tonnage, continued operation of long trains, reductions in crew sizes, elimination of cabooses, introduction of telemetry devices and the AFM as optional means of accomplishing certain tests, wider use of more sensitive brake valves, and lengthening of the distance between full train air brake tests (*i.e.*, 500 to 1,000 miles in 1982). This broad concern is also pertinent to passenger and commuter service, where a wide variety of braking systems are currently in use.

Ideally, locomotive and train braking regulations would be fashioned as performance standards addressing such issues as braking response and effort, redundancy, fail-safe characteristics, and similar criteria. Standards would vary depending upon the class of service, tonnage, stopping distances, and similar variables with respect to the equipment and operating environment, including human factors. Such standards would be enforceable because inspection and maintenance criteria would be certified by the operator as appropriate to the particular technology or because the technology itself included sufficient self-diagnostic capabilities to predict failure well before onset. To date, responsible approaches to generic performance standards for locomotive and train brakes have not been developed. Legitimate questions can be posed as to whether it would be cost effective to make major investments in such an effort at this late stage in the life cycle of pneumatic air brake systems. However, such innovations as the improved single car test and the AFM (for freight car brakes) point the direction for improved focus on system performance. Sophisticated passenger braking systems now in use or under development point the way toward improved response and advanced self-diagnostic capabilities.

FRA believes that this proceeding offers the opportunity to extend the modest advances in freight power brake systems and procedures by integrating available components of those systems and procedures in a more nearly optimal manner. Further, a start should be made at defining power brake performance requirements for high speed passenger service in advance of the introduction of a wide variety of domestic and foreign technologies in North American service. Comment and analysis are requested on these issues.

VIII. Miscellaneous Issues; Conventional Systems

In addition to the issues detailed above, this proceeding will be open for comments on other issues concerning power brakes. These may involve comments or suggestions regarding the modification of Federal regulations deemed necessary to maintain or improve railroad safety. The following are some of the specific areas on which FRA solicits comment from the public:

(1) Standards for brake pipe reduction. Present regulations require brake pipe reductions of either 15 pounds, 20 pounds, or full service for various train air brake tests. 49 CFR 232.12, 232.13. Should one standard be established for all tests?

(2) Performance of brake inspections. Should the regulations specify how brake inspections must be performed? In particular, should the regulations require inspection of both sides of the train for brake application and proper piston travel? Can proper brake inspections be performed from a moving vehicle, and should roll-by inspection of the brake release be allowed?

(3) COT&S requirements. Are brake maintenance requirements adequate? Have there been any problems associated with the elimination of the cleaning, oiling, testing, and stenciling (COT&S) requirements for freight brake valves and the addition of an enhanced repair track air brake test, *e.g.*, incidents of sticking brakes and undesired emergency brake applications? Or is it too early to make such a determination due to the very recent introduction of the enhanced repair track air brake test?

(4) Brake maintenance. FRA currently enforces freight and passenger car brake maintenance requirements established by the AAR. 49 CFR 232.17. Should such requirements be established by FRA?

(5) Charging of air brake system. Present regulations for air brake testing basically require that cars that have previously been tested in accordance with the regulations "be kept charged until road motive power is attached" or be retested. 49 CFR 232.12(i). Based on longstanding administrative interpretation and practice, FRA presumes that a brake system is no longer adequately charged if disconnected from the charging device (supply of pressurized air) for more than two hours before coupling of locomotives; otherwise, retesting is required. Is this interpretation valid in the present-day environment? Could an alternative procedure be established that would not jeopardize safety? Should the final interpretation be incorporated in the regulations?

(6) Obsolete provisions. Some provisions in Part 232 governing locomotive brake systems are at variance with Part 229 (Locomotive Safety Standards). Should these be corrected or eliminated entirely from part 232?

(7) Inbound brake equipment inspections. Section 232.14 covers inbound brake equipment inspections. One provision of this section requires that a 20-pound reduction be made on the inbound train and that the angle cock be closed to "bottle up" the air. 49 CFR 232.14(b). This requirement is contrary to present-day railroad operating rules, which state that the brake pipe must be left open on the standing cars. Is there any need for Section 232 14 in present-day operation?

(8) COT&S requirements—passenger cars. Passenger car brake equipment COT&S requirements reference Standard S–045 of the AAR Manual of Standards and Recommended Practices. 49 CFR 232.17(b)(2). The requirements for freight-type brake valves on passenger cars refer to the COT&S period for freight; however, the "freight" COT&S requirements were abolished January 1, 1992 The National Railroad Passenger Corporation (Amtrak) imposes a six-year requirement for such valves. Is this a satisfactory COT&S interval for these types of valves, which had periods of 10 years for AB Valves and 16 years for ABD Type Valves prior to January 1, 1992? Should this standard be incorporated in the regulations?

(9) Power brakes for freight service. Appendix B of part 232 covers the Specifications and Requirements for Power Brakes and Appliances for Operating Power-Brake Systems for Freight Service. This is the specification for AB valves, as was adopted in the early 1930s, and has not been modified since, although several deviations have been permitted. No improvements or new features, as reflected in present-day control valves, have been added to appendix B. Should this be updated, and what changes should be included?

(10) The 1,000-mile inspection. FRA's current regulations require intermediate brake inspections at points not more than 1,000 miles apart. These inspections are far more limited than initial terminal inspections in that the railroad is required only to determine that brake pipe leakage is not excessive, the brakes apply on each car, and the brake rigging is secure and does not bind our foul. 49 CFR 231.12(b). At the behest of the railroad industry and railroad labor organizations, FRA extended the distance between such inspections from 500 to 1,000 miles in the 1982 revisions to the power brake rules. The industry has suggested that modern freight trains can operate at least 5,000 miles without a power brake test. Is there evidence to support that view? If so, FRA would appreciate receiving it. Should tonnage, grade, and speed be considered in determining the proper interval for an intermediate test? What percentage of trains is affected by the 1,000-mile test? What operational delays can be attributed strictly to performance of these tests? (Please quantify.) What are the economic costs attributable strictly to performance of these tests? What are the safety concerns inherent in increasing the distance beyond 1,000 miles? Would the air flow method of testing leakage, if used, have any effect on the need for such intermediate tests?

IX. High Speed Passenger Train Brakes

High speed passenger trains (up to 200 mph) require a braking system which far exceeds the capabilities of that which is installed on present North American trains. The energy required to be dissipated in a stop from 200 mph is well over one billion foot-pounds.

To achieve this braking capability, the following considerations may be required:

- Braking on the wheel treads must be minimized or eliminated to avoid wheel thermal problems.
- Dynamic brakes on the locomotive(s) must be utilized to their maximum capability.
- Disc braking on locomotives and cars must be optimized.
- A sophisticated wheel slip control must be present to maximize the available wheel/rail adhesion.
- A microprocessor control system must blend the entire braking function to ensure maximum dynamic braking, supplemented by friction disc braking up to the limits of the available adhesion which changes with speed.
- Means must be provided to stop the train in an emergency with dynamic brakes inoperative.
- The dynamic brake must be rail-safe, reliable, and fault tolerant to provide operation even when the electric power is lost.

Electro-pneumatic. One typical method of achieving the above would consist of a two-pipe electro-pneumatic braking system providing for the independence of each truck to a brake demand from the brake pipe pressure reduction. Each car has an eletro-pneumatic valve which is actuated by electro-pneumatic control and electric trainline signal. The pressure in the brake pipe is controlled by the engineer's automatic brake valve in the leading cab.

The dynamic brake is used essentially in order to increase the life of brake components.

An on-board, state-of-the-art, speed-sensitive anti-skid system controls each axle independently in all braking modes. The system controls each motor truck and is acting on both dynamic and friction brakes.

The dynamic brake may have priority action, and friction brakes are automatically blended when the dynamic brake demand is exceeded.

In case of brake failure, the electro-mechanical relays, which are independent of he electronic controls for the traction and the braking modes, will automatically increase the air brake to its maximum value. Also, an emergency application can be accomplished through pneumatic application.

Electronic equipement. These performance characteristics can also be achieved through use of a separate microprocessor that controls the traction and the braking functions on each traction motor truck. The computer also monitors the power dissipation in rheostats, train speed, the speed differential between axles on one truck and the motor axles on adjacent trucks (wheel blockage), and wheel slide and optimizes braking forces obtained from each system.

The microprocessors store a record of failures and circumstances. Further, specific faults such as truck instability and brakes not released are indicated in the cab. For urgent problems an audible signal will notify the conductor.

Speed redution. Advanced systems are also available to control train speed. While all brakes must be operable at the initial terminal, in case of brake failures enroute, speed is reduced proportionately to maintain a uniform stop distance.

When the train exceeds the maximum speed permitted by the signal system, the automatic train control will initiate an emergency braking action, and the train must come to a complete stop before proceeding.

In addressing the regulations concerning brakes for high speed trains, FRA has the following questions:

(1) Should the specification for high speed passenger train braking systems be based on performance, such as stop distance and speed, rather than design criteria?

(2) Should brake system tests permit the utilization of sensors and diagnostics in determining proper condition of the brake equipment in addition to a visual inspection of each brake component?

(3) Should the brake system be continuously monitored by a computer?

(4) Should a completely separate standby computer be available in the cab in case of failure of the main computer?

(5) Since maximum braking effort is available during normal stops, is there a need for higher braking forces (such as 15 to 20%) in emergency?

(6) Should a standby power source be available for the dynamic brake in case of electric power failure?

(7) Should the computer both store and display a record of failures and circumstances which can also be integrated with a preventive maintenance schedule?

This list of issues is not intended to be exhaustive; the purpose of this proceeding has been previously described, and we solicit comments on all issues relevant to that stated purpose

Regulatory Impact

FRA will evaluate any proposed action and its potential impacts in accordance with existing regulatory policies to determine whether it would be a "major rule" under DOT policies, or have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Due to the substantial impact this rulemaking may have on a major transportation safety problem, this rulemaking, pursuant to DOT Order 2100.5, is expected to be a "significant rulemaking" but not expected to be "major."

FRA will further evaluate any proposed rule pursuant to DOT regulations implementing the National Environmental Policy Act, 42 U.S.C. 432 *et seq.*

Any proposed action will be further evaluated to determine information collection burdens pursuant to the Paperwork Reduction Act. Any proposed action will be evaluated pursuant to Executive Order 12612 to determine whether it would have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

The economic impact of any rule that may be proposed on the subject of power brakes cannot be accurately quantified with the information currently available to FRA. An analysis of the economic impact will be made after evaluating the data submitted in response to this Advance Notice of Proposed Rulemaking, and the findings of that analysis will be published as part of any further notices of rulemaking issued in this matter. At present, in the area of two-way EOT devices, FRA roughly estimates that any two-way EOT device sufficient to meet expected requirements will cost the industry between $4,000 and $10,000 per unit. However, because a determination cannot be made with regard to what locations or categories of trains will require the use of two-way EOT devices until after evaluating the comments requested by the ANPRM, FRA cannot predict with any accuracy the number of units this rule may require. In addition, without fully evaluating the comments solicited by this ANPRM, it is impossible to determine what action FRA will take with regard to the other areas addressed by this ANPRM, and thus it is impossible to determine the economic impact of those changes at this time. Furthermore, any action taken by FRA is expected to result in a reduction of accidents, personal injuries and property damage. However, until FRA fully considers the comments requested by this ANPRM and determines what action it will take, these benefits cannot be quantified.

Public Proceedings

As reflected in the introductory material to this notice, FRA will hold several technical conferences or workshops for the purpose of developing the issues outlined in this notice. Each workshop will be primarily devoted to a cluster of related topics and will be structured to include a brief statement of the issues, a summary of research findings and field experience pertinent to the topic, and a "roundtable" discussion at which a full exchange of views will be solicited. At the conclusion of each workshop, the floor will be opened to any interested person who wishes to make a brief oral statement in the same manner allowed at any public hearing conducted under FRA's Rules of Practice (49 CFR part 211); and such statement may address any issue within the scope of this rulemaking.

FRA urges that persons with strong technical backgrounds in locomotive and train braking systems, inspection and maintenance of such systems, and use of such systems in train operations be designated to represent interested parties at the workshops. Persons contacting FRA at least 5 business days prior to the workshop with an expression of the intent to participate may be afforded preference with respect to participation in the workshop discussion.

FRA also solicits the submission of written comments, which should be filed in triplicate with the Docket Clerk at the address provided above. Specific responses to the questions set forth in this notice would be appreciated. Reference to the topic and question number will ensure full consideration of the comments submitted.

Issued in Washington, DC, on December 24, 1992.

S. Mark Lindsey,

Acting Administrator, Federal Railroad Administration.

Appendix—Accident/Incident Cause Codes as Contained in Appendix C of FRA Guide for Preparing Accident/Incident Reports

400—Air hose uncoupled or burst

400L—Air hose uncoupled or burst, locomotive

402—Broken brake pipe or connections

402L—Broken brake pipe or connections, locomotive

403—Obstructed brake pipe (closed angle cock, ice, etc.)

403L—Obstructed brake pipe (closed angle cock, ice, etc.), locomotive

404—Other brake pipe components damaged, worn, broken, or disconnected

404L—Other brake pipe components damaged, worn, broken, or disconnected, locomotive

405—Brake valve malfunction (undesired emergency)

405L—Brake valve malfunction (undesired emergency), locomotive

406—Brake valve malfunction (stuck brake, etc.)

406L—Brake valve malfunction (stuck brake, etc.), locomotive

407—Rigging down or dragging

407L—Rigging down or dragging, locomotive

408—Hand brake (including gear) broken or defective

408L—Hand brake (including gear) broken or defective, locomotive

409—Hand brake linkage and/or connections broken or defective

409L—Hand brake linkage and/or connections broken or defective, locomotive

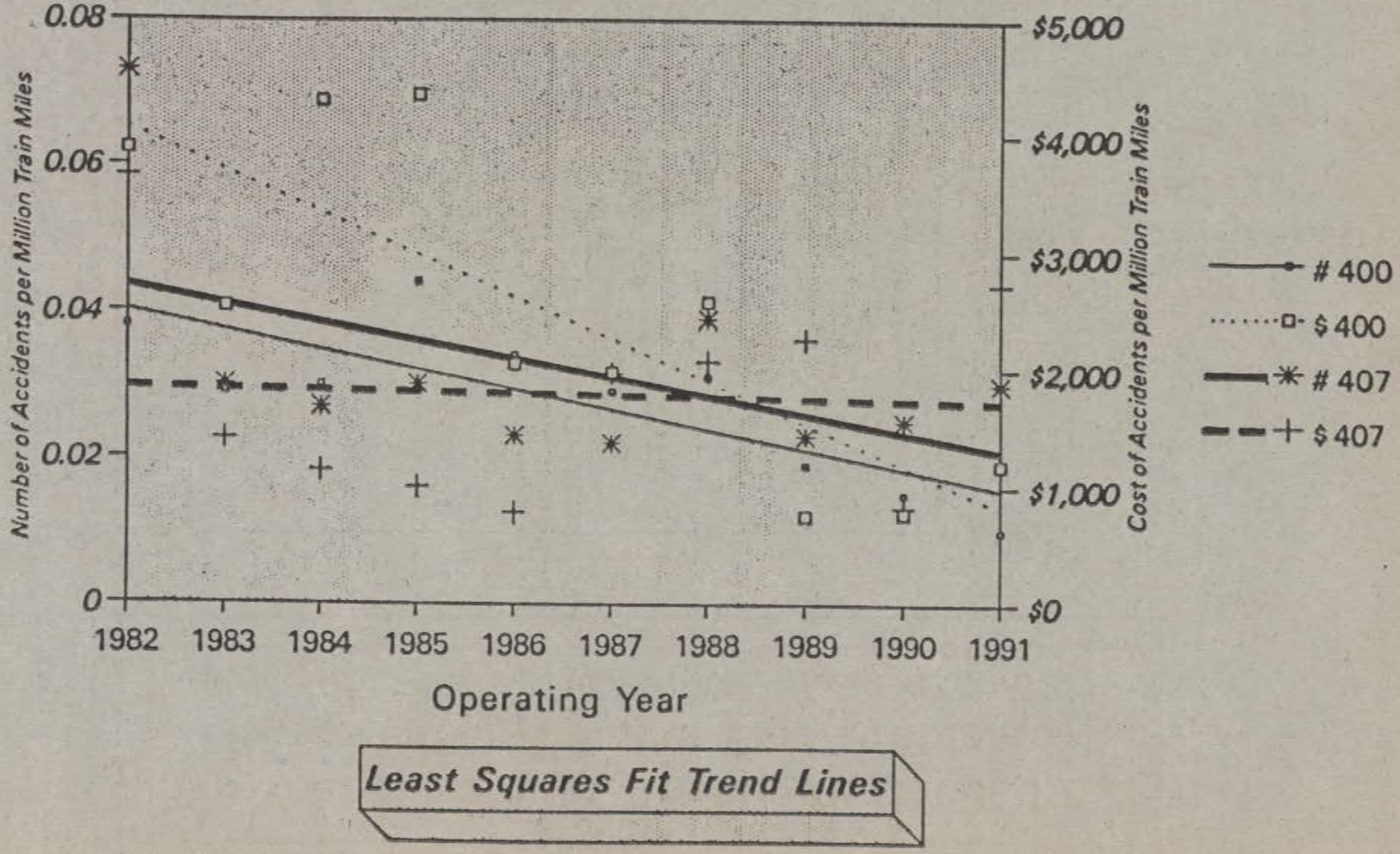
410—Other brake defects, cars

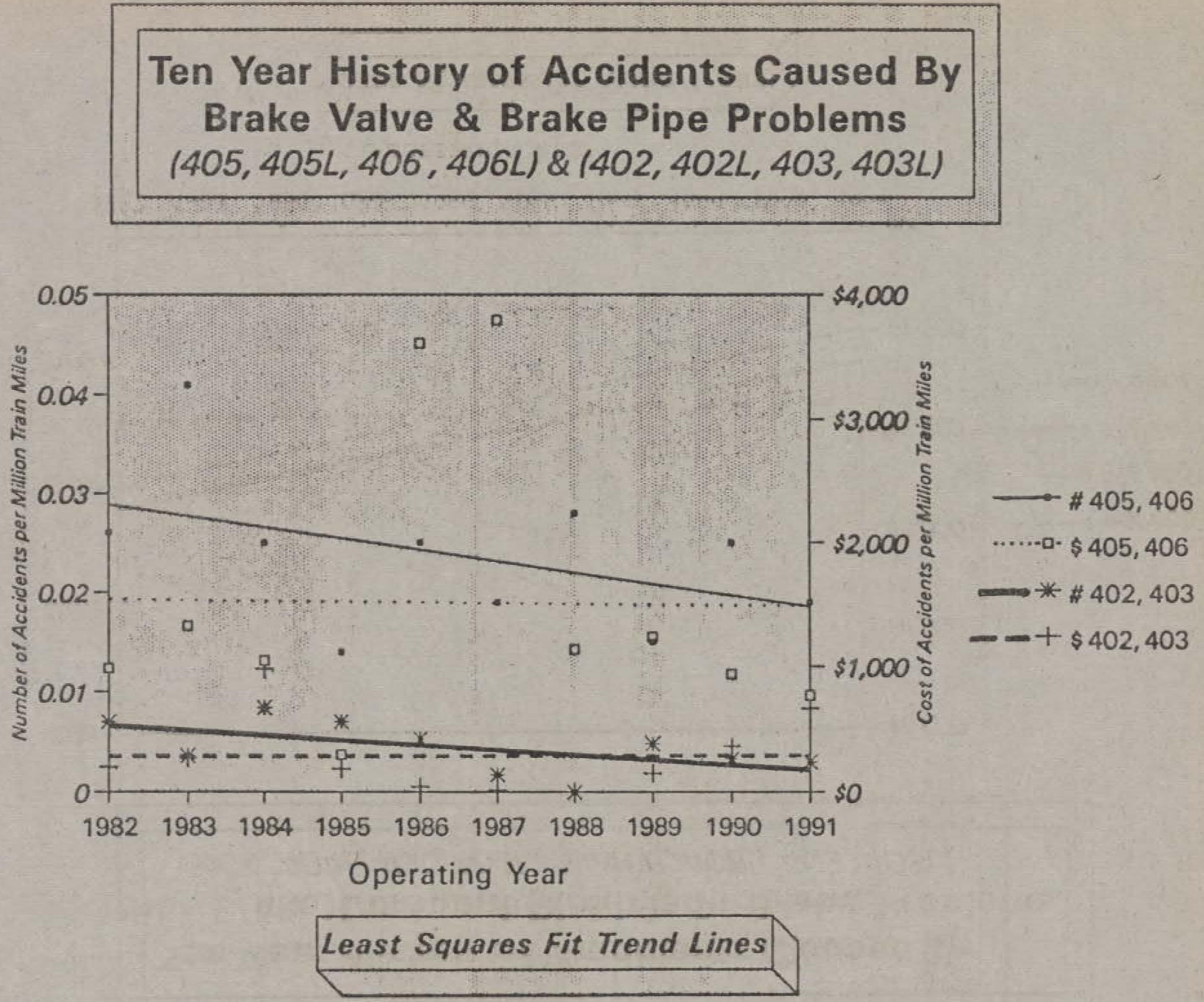
410L—Other brake defects, locomotives

BILLING CODE 4910-06-M

Ten Year History of Accidents Caused By Air Hose and Rigging Problems

(400, 400L) & (407, 407L)



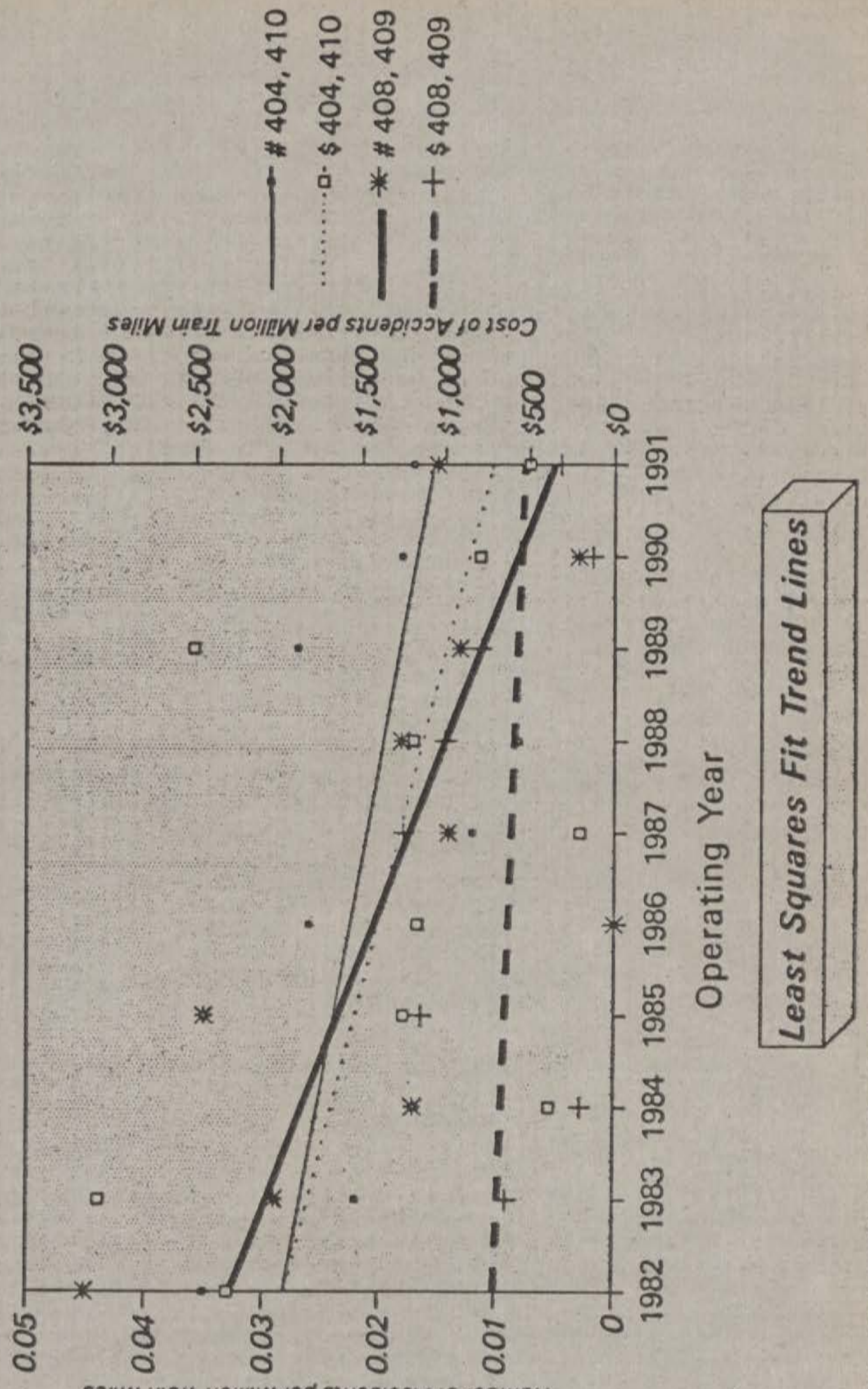


Ten Year History of Accidents Caused By Brake Valve & Brake Pipe Problems
(405, 405L, 406, 406L) & (402, 402L, 403, 403L)

Least Squares Fit Trend Lines

Ten Year History of Accidents Caused By Other Brake Component & Hand Brake Problems

(404, 404L, 410, 410L) & (408, 408L, 409, 409L)



[FR Doc. 92-31770 Filed 12-30-92; 8:45 am]

BILLING CODE 4910-06-C

Notices

Federal Register

Vol. 57, No. 252

Thursday, December 31, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 24, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

Animal and Plant Health Inspection Service

Domestic Quarantines—Addenum 2
PPQ 530 & 540
On Occasion
State or local governments; Farms; Businesses or other for-profit; 120,360 responses; 22,976 hours
Thomas Flannigan (301) 436–8247

Reinstatement

Rural Electrification Administration

Inventory of Work Orders
REA Form 219
On Occasion
Small businesses or organizations; 8,100 responses; 12,150 hours William E. Davis (202) 720–9450

Agricultural Stabilization and Conservation Service

7 CFR 1425, Regulations for Cooperative Marketing Associations CC–119, 120, 719, 844, 846, 846–1, 846–2, 847, 847 Amend., CCC–Cotton G, G4
Recordkeeping; On Occasion, Annually
Farms; Non-profit institutions; 3,505 responses; 28,083 Hours
Laurie Anselmo (202) 205–7832

Human Nutrition Information Service

Continuing Survey of Food Intakes by Individuals CSFII 1994–96
On Occasion
Individuals or households; 1,000 responses; 500 hours
Lori Borrud (301) 436–8485

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 92–31787 Filed 12–30–92; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Timber Harvest, Reforestation, Road Construction and Closure, and Right-of-Way Acquisition Near Ibex Mountain, Cottonwood Creek and Horse Creek, Gallatin National Forest, Park County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvest, reforestation, right-of-way acquisition, and road construction and closure in the vicinity of Ibex Mountain and the Cottonwood and Horse Creek drainages, located in the southwest corner of the Crazy Mountains, Gallatin National Forest, Livingston Ranger District, Park County, Montana. The purpose of the proposed action is to improve timber productivity, salvage windthrown timber, contribute to furnishing timber to local lumber mills, and acquire legal access across privately owned lands.

The Gallatin National Forest Land and Resource Management Plan (Forest Plan) provides overall guidance for land management activities, including timber and road management, within the area. The proposed actions of timber harvest, reforestation, road reconstruction, road construction, right-of-way acquisition, and road closures are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). This EIS will tier to the Gallatin Forest Plan Final EIS (September, 1987).

DATE: Written comments and suggestions should be received on or before February 16, 1993.

ADDRESS: Submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Fred Salinas, District Ranger, Livingston Ranger District, Gallatin National Forest, Route 62, Box 3197, Livingston, Montana, 59047.

FOR FURTHER INFORMATION CONTACT: Greg Kujawa, EIS Team Leader, Gardiner Ranger District, Gallatin National Forest, Phone (406) 848–7375.

SUPPLEMENTARY INFORMATION: Timber harvest and reforestation is proposed on approximately 380 acres of forested land which has been designated as suitable for timber management by the Gallatin Forest Plan. The timber harvest operations of general administration of National Forest lands will require acquisition of approximately 1.4 miles of permanent road right-of-way, reconstruction of approximately 9.5 miles of existing roads, and construction of approximately 4.7 miles of new road. Less than one mile of temporary road would be needed. Road closures involve closing the 4.7 miles of new roads and 1.7 miles of existing roads to wheeled vehicles year-round.

The Gallatin Forest Plan provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The purpose of timber harvest and reforestation in the Ibex area is to: (1) Improve timber productivity by replacing slow-growing mature and overmature stands with younger, more vigorously growing trees; (2) salvage windthrown timber; and (3) contribute to furnishing a continuous supply of timber to local lumber mills. The purpose of road construction and reconstruction is to access stands of timber to be harvested. The purpose of right-of-way acquisition is to provide legal access for Agency employees and contractors to manage and protect National Forest resources. The purpose of closing roads is to minimize future road maintenance costs, reduce sedimentation, and to regulate overall open road density to maintain or improve big game habitat security.

The project area consists of approximately 4500 acres of National Forest land located in T3N, R10E, sec 12–14, 22, and 24; and T3N, R11E, sec 7, 18, and 19, P.M. MT. Road work is proposed across private land in T3N, R10E, sec 23, 25, 26, 34, and 35. The right-of-way acquisition would occur in T3N, R10E, sec 23. The majority of the harvesting would occur within the Crazy Mountains Roadless Area (#1541).

The decision to be made is what, if anything, should be done in the Ibex Project Area to: (a) Increase timber productivity and contribute to the Forest's sustained yield of timber products, (b) dispose of slash and reforest harvested lands, (c) acquire the necessary rights-of-way to harvest timber and administer National Forest lands, and (d) develop and manage the road system to facilitate removal of timber and reforest stands.

The areas of proposed timber harvest and reforestation would occur within Management Areas 10 and 11. Timber harvest would occur only on suitable timber land. Road construction and reconstruction would occur in these two management areas plus Management Area 7 when crossing streams. Below is a brief description of the applicable management direction.

Management Area 7

These are riparian zones or areas where vegetation is present that requires either free or unbounded water or soil moistures in excess of what is normally found in the area. Lands within this management area are suitable for timber harvest as long as soil, water, vegetation, fish, and dependent wildlife species are protected. These suitable lands must also be adjacent to other management areas suitable for timber management.

Management Area 10

These are areas which contain suitable timber lands and are also managed for livestock grazing.

Management Area 11

These are areas that contain productive timber lands which are suitable for timber harvest, provided that big game habitat objectives are met.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities in response to issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered, including the effects caused by recent salvage of windthrown timber and past harvesting on private lands. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will occur December, 1992 to February, 1993. In addition to this initial scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify issues to be analyzed in depth.
3. Eliminate insignificant issues or those which have been covered by a relevant previous environmental analysis, such as the Gallatin Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Some public comments have already been received in conjunction with a previous timber sale proposal (Ibex Timber Sale Environmental Assessment, 1982 through 1988). The following principle issues have been identified so far:

1. Harvesting timber and building roads on the east side of Cottonwood Creek (in Management Area 11) may affect mule deer.
2. The proposed timber harvesting and road construction will change the undeveloped character of the Crazy Mountains Roadless Area (#1541).
3. The proposed activities may affect the traditional cultural/spiritual use of the Crazy Mountains by the Crow Indians.

Other issues commonly associated with timber harvesting and road construction includes: Effects on cultural resources, water quality, soils, old growth, and scenery in the area. This list will be verified, expanded, or modified based on public scoping for this proposal.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November of 1993. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Ibex area participate at that time. To be most helpful, comments on the Draft EIS should be as site-specific as possible. The Final EIS is scheduled to be completed by April, 1994.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental imapct statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy

Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Gallatin National Forest, P.O. Box 130, Federal Building, Bozeman, MT 59771.

Dated: December 22, 1992.

David P. Garber,

Forest Supervisor.

[FR Doc. 92-31803 Filed 12-30-92; 8:45 am]

BILLING CODE 3410-11-M

Regeneration Harvest, Salvage and Road Construction Within the Upper and Lower Deer Creek Drainage

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impact of proposed regeneration timber harvest, timber salvage and road construction within the Upper and Lower Deer Creek Drainage within the North Absaroka Roadless Area #1371 on the Big Timber Ranger District of the Gallatin National Forest, Sweetgrass County, Montana. This EIS will tier to the Gallatin National Forest Land and Resource Management Plan (Forest Plan) EIS of September, 1987. The Gallatin Forest Plan provides overall guidance for land management activities within the Deer Creek area. The purpose for the proposed actions are to contribute to providing a sustained yield of timber products and improve the productivity of timber growing lands, help satisfy short-term demands for timber, to salvage insect infected timber, to reduce risk of future fire and insect and disease infestations.

DATES: Written comments and suggestions should be received on or before February 16, 1993.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Steve Brady, District Ranger, Big Timber Ranger District, Gallatin National Forest, PO Box 196, Big Timber, Montana, 59011.

FOR FURTHER INFORMATION CONTACT: Teri England, Forester, (406) 932-5155.

SUPPLEMENTARY INFORMATION: The timber management and road construction activities under consideration would occur within a 13,960 acre analysis area, all within the North Absaroka Roadless Area, no. 1371. This portion of the roadless area is approximately 50,000 acres in size and has been bisected and somewhat isolated from other wilderness and roadless lands by previous roading, timber harvest and mining developments.

The proposed action would harvest about 469 acres of lodgepole and Douglas fir, 144 acres of which would be clearcuts with reserve trees and the rest using shelterwood harvest prescriptions. Five miles of new road would be constructed.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed activities would be implemented. Other alternatives will examine varying levels and locations for the proposals in response to issues and goals and objectives.

The Forest Service will analyze and document the direct, indirect and cumulative environmental effects of the proposed action and alternatives. Past, present and projected activities on both private and National Forest lands will be considered, including the effects caused by recent wildfires and by wind-thrown timber. In addition, the EIS will disclose the analysis of site-specific mitigation measures and their effectiveness. The principal environmental issues identified to date are related to:

1. The effects of timber harvest and road construction on the natural integrity of the North Absaroka Roadless Area, including potential for future wilderness classification.
2. The effects of proposed timber harvest on alleviating the risks of future insect infestations and catastrophic wildfire by breaking up continuous stands of overmature timber and removing a heavy build-up of downed woody fuels.
3. The potential for increased sediment and other effects on streams and fisheries from timber harvest and road construction.
4. The effects of timber harvest and new roads on the distribution and abundance of different plant and animal communities within the area.

While public participation in this analysis is welcome at any time, comments received within 45 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the EPA and available for public review in December, 1993. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which will be accompanied by a Record of Decision. The final EIS is expected to be filed in April, 1994.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: December 22, 1992.

David P. Garber,

Forest Supervisor, Gallatin National Forest.

[FR Doc. 92-31804 Filed 12-30-92; 8:45 am]

BILLING CODE 3410-11-M

Stanislaus National Forest; Cancellation of Environmental Impact Statement; Big Creek Reforestation

AGENCY: Forest Service, USDA.

ACTION: Notice of cancellation.

SUMMARY: The Stanislaus National Forest has cancelled its proposed reforestation of 11,000 acres burned in the Stanislaus Complex Fires of 1987 ("Big Creek Reforestation"), located on the Groveland Ranger district in Tuolumne County, CA. The notice of intent to prepare an Environmental Impact Statement, published in the **Federal Register** of August 9, 1989 (54 FR 32678) is hereby rescinded.

Authorities: 42 U.S.C. 4321 *et seq.*; 40 CFR 1501.7; FSH 1909.15(21.3))

FOR FURTHER INFORMATION CONTACT: Herb Hahn, Groveland District Ranger, 24545 Old Highway 120, Groveland, CA 95321, (209) 962–7825.

Dated: December 12, 1992.

Janet L. Wold,

Forest Supervisor.

[FR Doc. 92–31821 Filed 12–30–92; 8:45 am]

BILLING CODE 3410–11–M

Stanislaus National Forest; Cancellation of Environmental Impact Statement; Larson Reforestation

AGENCY: Forest Service, USDA.

ACTION: Notice of cancellation.

SUMMARY: The Stanislaus National Forest has cancelled its proposed reforestation of 26,708 acres burned in the Stanislaus Complex Fires of 1987 ("Larson Reforestation"), located in Mariposa and Tuolumne Counties, CA. The notice of intent to prepare an Environmental impact Statement, published in the **Federal Register** of August 9, 1989 (54 FR 32679) is hereby rescinded.

(**Authorities:** 42 U.S.C. 4321 *et seq.*; 40 CFR 1501.7; FSH 1909.15(21.3))

FOR FURTHER INFORMATION CONTACT: Herb Hahn, Groveland District Ranger, 24545 Old Highway 120, Groveland, CA 95321, (209) 962–7825.

Dated: December 17, 1992.

Janet L. Wold,

Forest Supervisor.

[FR Doc. 92–31822 Filed 12–30–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of Fastener Quality Act Advisory Committee

AGENCY: National Institute of Standards and Technology, DoC.

ACTION: Notice of Advisory Committee Meeting open to the public.

SUMMARY: The National Institute of Standards and Technology (NIST) will hold a meeting of the Fastener Advisory Committee on January 26, 1993. The meeting will be for the purpose of providing advice to the Department of Commerce, pursuant to statute, on the implementation of the Fastener Quality Act of 1990 (Pub. Law 101–592).

DATES: The meeting will be held on January 26, 1993 from 10 a.m. to 2 p.m., or earlier if so adjourned.

ADDRESSES: The meeting will be held at the Gaithersburg Merriott, Gaithersburg, Maryland.

AGENDA: To finalize the Committee's recommendations on suggested amendments to the Fastener Quality Act.

PUBLIC PARTICIPATION: The meeting is open to the public. Attendance shall be on a first-come, first-serve basis insofar as seating is concerned, up to the reasonable and safe capacity of the meeting room. The public may file written statements with the Advisory Committee at any time before or after the meeting. An effort shall be made to set aside a portion of the meeting for public participation. To the extent that the meeting time and agenda permit, interested persons will be allowed to present oral statements or to participate in the discussions.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Edgerly, Deputy Director, Technology Services, National Institute of Standards and Technology, Building 221, Room A363, Gaithersburg, MD 20899, Telephone (301) 975–4500.

Dated: December 24, 1992.

John W. Lyons,

Director.

[FR Doc. 92–31776 Filed 12–30–92; 8:45 am]

BILLING CODE 3510–13–M

Announcement of Meeting of National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Interim Meeting of the National Conference on Weights and Measures will be held January 10 through 14, 1993, at the Hyatt Regency Bethesda Hotel, Bethesda, MD. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, as well as the annual meeting to be held next July (a notice will be published in the **Federal Register** prior to such meeting), brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations of discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATES: The meeting will be held January 10–14, 1993.

LOCATION OF MEETING: Hyatt Regency Bethesda Hotel, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Carroll Brickenkamp, Executive Secretary, National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone: (301) 975–4005.

Dated: December 23, 1992.

John W. Lyons,

Director.

[FR Doc. 92–31777 Filed 12–30–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Surf Clam/Ocean Quahog Transfer Log.

Agency Form Number: No form number assigned.

OMB Approval Number: 0648–0238.

Type of Request: Revision of a currently approved collection.

Burden: 52 hours.

Number of Respondents: 206 (average number of responses per respondent is 3).

Avg Hours Per Response: 5 minutes.

Needs and Uses: The surf clam and ocean quahog fisheries are managed under an Individual Transferable Quota (ITQ) system under which harvest rights are allocated to individual owners based on their percentage share of the annual quota. Cages of product are required to be tagged to facilitate tracking and enforcement. Ownership is transferable and this data collection is used to track such transfers.

Affected Public: Individuals, businesses or other for–profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Agency: National Oceanic and Atmospheric Administration.

Title: Survey of Intent and Capacity to Process Fish and Shellfish - Northeast Region.

Agency Form Number: No form number assigned.

OMB Approval Number: 0648–0235.

Burden: 10 hours.

Number of Respondents: 40.

Avg Hours Per Response: Ranges between 5 and 15 minutes.

Needs and Uses: The Fishery Management Plans for surf clams/ocean quahogs, and for squid, mackerel and butterfish require a survey of domestic processors and joint venture operators to establish industry capacity to utilize these managed species. The information is used to help set quotas and to refine initial allocation amounts.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: Semi–annually, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Ron Minsk, OMB Desk Officer, Room 3019, New Executive Office Building, Washington, D.C. 20503.

Dated: December 23, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–31701 Filed 12–30–92; 8:45 am]

BILLING CODE 3510–CW–F

Technology Administration; National Medal of Technology Nomination Evaluation Committee

AGENCY: Technology Administration, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces the forthcoming closed meeting of the National Medal of Technology Nomination Evaluation Committee. The Committee was rechartered on September 16, 1991.

The Committee shall make recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Medal of Technology.

The Committee will meet only in executive session to discuss matters concerned with applying the criteria for determining the relative merits of all persons and companies nominated for the Medal as a result of a public solicitation.

TIME AND PLACE: The meeting will begin at 10 a.m. and end at 3:30 p.m. on January 15, 1993. The meeting will be held in room 4830 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Braden, Manager, National Medal of Technology Nomination Evaluation Committee, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, room 4418, Washington, DC 20230, (202) 482–5572.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close the meetings of the Committee to the public on the basis of section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended, section 552b(c)(9)(B) of title 5, United States Code was approved by the Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the General Counsel on (December 28, 1992), in accordance with the Federal Advisory Committee Act, since premature publicity about candidates under consideration for the Medal, who may or may not ultimately receive the award, would be likely to discourage nominations for the Medal. This would be likely to significantly frustrate implementation of a proposed agency action. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, room 6628, Washington, DC 20230, (202) 482–4210.

Dated: December 28, 1992.

Robert M. White,

Under Secretary for Technology.

[FR Doc. 92–31847 Filed 12–30–92; 8:45 am]

BILLING CODE 3510–18–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Costa Rica

December 24, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: January 5, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The 1993 limits for Categories 347/348 and 443 are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 48022, published on October 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 24, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993.

Effective on January 5, 1993, you are directed to amend the directive dated October 15, 1992, to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Costa Rica:

Category	Adjusted twelve-month limit
347/348	1,159,071 dozen.
443	190,000 numbers.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31834 Filed 12-30-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Costa Rica

December 24, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: January 5, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 347/348 and 443 are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14389, published on April 20, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 24, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on January 5, 1993, you are directed to amend further the directive dated April 14, 1992, to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Costa Rica:

Category	Adjusted twelve-month limit [1]
347/348	1,249,502 dozen.
443	226,000 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31835 Filed 12-30-92; 8:45 am]

BILLING CODE 3510-DR-F

Announcing a New 1992 Agreement Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

December 23, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On December 5, 1991, a notice was published in the **Federal Register** (56 FR 63716) announcing the 1992 agreement limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong.

In a Memorandum of Understanding dated November 23, 1992, the Governments of the United States and Hong Kong agreed to amend their Bilateral Textile Agreement of August 4, 1986, to establish new limits for man-made fiber twills and sateen fabric in Category 617. The 1992 limit for Category 617 is 3,250,000 square meters.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31836 Filed 12-30-92; 8:45 am]

BILLING CODE 3510-DR-F

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

December 23, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending limits.

EFFECTIVE DATE: January 5, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6719. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated December 18, 1992, the Coordination Council for North American Affairs (CCNAA) and the American Institute in Taiwan (AIT), agreed, among other things, to amend the 1993 limits for certain cotton and man-made fiber textile products, produced or manufactured in Taiwan.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53885, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the MOU, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993.

Effective on January 5, 1993, pursuant to the Memorandum of Understanding (MOU) dated December 18, 1992 between the Coordination Council for North American Affairs (CCNAA) and the American Institute in Taiwan (AIT), you are directed to amend the limits for the following categories:

Category	Twelve-month restraint limit[1]
Sublevels in Group II	
359–C/659–C[2]	1,458,273 kilograms.
638/639	6,578,589 dozen.
640	1,058,909 dozen of which not more than 500,000 dozen shall be in Category 640–Y[3].
642	778,299 dozen.
645/646	4,138,498 dozen.
659–S[4]	1,689,967 kilograms.

[1] The limits have not been adjusted to account for any goods exported after December 31, 1992.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–31837 Filed 12–30–92; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who have other severe disabilities.

EFFECTIVE DATE: February 1, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 16, 1992, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (57 FR 54062) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing a small entity to furnish the commodity or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Service

Mailroom Operation, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–31838 Filed 12–30–92; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange; Proposed Amendments to the Liquified Propane Gas Futures Contract Relating to Delivery Location, Delivery Methods, Delivery Procedures, Delivery Timing, Force Majeure and Delivery Performance

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has submitted proposed amendments to its liquified propane gas (propane) futures contract that, among other things, would: (1) Restrict futures deliveries to the facility of the Texas Eastern Products Pipeline Company (TEPPCO)

in Mont Belvieu, Texas; (2) delete in-line transfer as a delivery method as well as the option for the buyer to select the method of delivery; (3) restrict pumpover deliveries exclusively to movement from the seller's facility to TEPPCO and eliminate the seller's three-day advance notice to the buyer for pumpover deliveries; (4) eliminate the consecutive ten-day delivery period and the non-clearance delivery provisions as well as the late performance provisions, including the schedule of late performance charges; (5) eliminate the buyer's option to select a preferred delivery site; (6) specify that delivery can begin no earlier than the fourth business day, instead of the tenth calendar day, of the delivery month and must be completed by the calendar day prior to the last business day of that month, instead of two business days prior to the end of the delivery month; and (7) increase the non-performance penalty charge to 20% from 10% of contract value.

In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division, is requesting comment on these proposals.

DATES: Comments must be received on or before the February 1, 1993.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the proposed amendments to the New York Mercantile Exchange liquified propane gas futures contract.

FOR FURTHER INFORMATION CONTACT: John Forkkio, Jr., Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: Under current provisions of the propane futures contract, delivery must be F.O.B. at any pipeline, storage or fractionation facility in Mont Belvieu, Texas with direct pipeline access to TEPPCO. To effect delivery, clearing members representing buyers or seller must give a series of delivery instructions beginning with a notice of intention to accept or delivery, which must be given to the Exchange on the first business day after the last day of trading.

The buyer in his delivery instructions has the option, subject to certain provisios, of requesting delivery via one of four delivery methods: In-line, in-well, pumpover (i.e., inter-facility transfer) or book transfer. In the case where the buyer requests delivery via an inter-facility transfer or pumpover, the seller must provide the buyer with a three-day advance notice prior to delivery. Further, deliveries on the contract cannot begin earlier than the tenth calendar day of the delivery cannot begin earlier than the tenth calendar day of the delivery month and must be completed no later than two business days prior to the end of the delivery month; provided, however, that any delivery must be completed within a consecutive ten-day period specified by the buyer in his delivery instructions. By the close of business on the same day that the buyer's delivery instructions are received, the seller must give to the buyer a notice of clearance (i.e., the seller is able to deliver pursuant to the buyer's instructions) on non-clearance (i.e., the seller is not able to deliver pursuant to the buyer's instructions).

Existing provisions further stipulate that, if either party does not complete delivery within the consecutive ten-day period, late performance provisions would be invoked and the responsible party would be assessed late performance penalties, which can total up to 5% of contract value. If either party fails to perform on its delivery obligation (i.e., to make or take delivery) on the contract, that party would be assessed (in addition to any late performance charges) a penalty for non-performance totalling not less than $3,000 per contract or 10% of contract value.

Under the proposed amendments, delivery on the propane futures contract will be restricted to the TEPPCO facility at Mont Belvieu, Texas, unless a mutual agreement is reached between the buyer and seller for delivery at another eligible delivery facility in Mont Belvieu. The proposed amendments will delete in-line transfer as a method of delivery and also eliminate the option for the buyer to request a particular delivery method or a preferred delivery site.

Under the proposals, all pumpover deliveries will be restricted to movement from the seller's facility to TEPPCO, and the seller would be permitted to unilaterally change the method of delivery from pumpover to an in-well transfer at TEPPCO. The proposed amendments also would eliminate the requirement that the seller provide the buyer with a three-day advance notice for pumpover deliveries.

The subject proposed amendments also would specify that delivery cannot begin earlier than the fourth business day, instead of the tenth calendar day, of the delivery month and that delivery must be completed by the calendar day prior to the last business day instead of two business days prior to the end of the delivery month. Additionally, the proposals will eliminate the consecutive ten-day delivery period as well as the late performance and non-clearance provisions, including the schedule of late performance charges. However, the amendments will increase to 20% from 10% of contract value the penalty charge for failure to perform on the propane contract.

The Exchange proposes to apply the proposed amendments to existing and newly listed contract months beginning with the third nearby delivery month following its receipt of Commission approval.

According to the Exchange, the proposed amendments were proposed to conform the futures delivery rules with cash market practices and to clarify the delivery obligations of the propane futures contract.

The Commission requests comment on the proposed changes to the NYMEX propane futures contract. The Commission is specifically requesting comments on the effect of the proposed restrictions regarding the delivery location and pumpovers on the economically deliverable supply of propane available for the contract as well as the effect, if any, on the futures pricing basis. The Commission also requests comment on the proposal to apply the amendments to certain existing contracts.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on December 24, 1992.

Gerald D. Gay,

Director.

[FR Doc. 92-31782 Filed 12-30-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Joint Precision Interdiction (JPI); Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Joint Precision Interdiction (JPI) will meet in closed session on January 26–27, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review acquisition strategies needed for an optimum family of surveillance, reconnaissance, and target acquisition systems, C3I systems and weapon systems required to perform the JPI mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 28, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-31780 Filed 12-30-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Aircraft Assessment; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Aircraft Assessment will meet in closed session on January 12–13, January 21–22, and January 28–29, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study the technical risks associated with the AX, F–22, and the F/A–18E/F aircraft, and examine ways that current aircraft can be modified, upgraded, or otherwise adapted so that a single aircraft could be used by all the Services in parallel missions. In addition, an independent assessment of the prototyping issues on the AX and F/A–18E/F will be examined.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c) (1) (1988), and that accordingly these meetings will be closed to the public.

Dated: December 28, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-31779 Filed 12-30-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Draft Environmental Impact Statement To Assess the Impacts of Disposal of Fort Ord Property and Potential Reuses of the Property and the Socioeconomic Impacts of the Closure of Fort Ord on the Monterey Community

AGENCY: Department of Defense, United States Army.

ACTION: Notice of availability.

SUMMARY: Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, mandates the closure of Fort Ord, California by 1997.

Public Law 101–510 exempted the Department of Defense from considering the need for closing, realigning or transferring functions and from looking at alternative installations to realign or close. The Department of the Army still must prepare environmental impact analyses to assess the environmental effects of property disposal and the environmental effects of potential reuse of the property after disposal. The Conference Report for House Resolution 2100 for the National Defense Authorization Act for fiscal years 1992 and 1993 added the requirement to address the socioeconomic effects of relocating the Army from the Monterey community. This DEIS meets that requirement.

This DEIS will be available for public review for 45 days. A public hearing will be held during the public review process to receive comments on the DEIS. After the public comment period has ended, a final EIS will be prepared.

FOR FURTHER INFORMATION CONTACT:

Mr. Bob Verkade, Sacramento District, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, CA 95814–2922 or call (916) 557–7423.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health) OASA (I, L&E).

[FR Doc. 92-31598 Filed 12-30-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel National Defense Task Force, will meet January 14, 1993, from 9:00 a.m. to 5:00 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to provide framework for the place of naval forces in U.S. national defense. The entire agenda for the meeting will consist of discussion of key issues regarding the future threat assessment. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22303-0268, Phone (703) 756-1205.

Dated: December 22, 1992.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92-31818 Filed 12-30-92; 8:45 am]

BILLING CODE 3810-AE-F

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Emerging Technology Task Force will meet January 28, 1993, from 9:00 a.m. to 5:00 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to address naval technological response to changes in military warfare. The entire agenda for the meeting will consist of discussion of key issues regarding direction of technology and technologies necessary for Naval Forces in the role envisioned for them by ... " From the Sea". These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 23, 1992.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92-31819 Filed 12-30-92; 8:45 am]

BILLING CODE 3810-AE-F

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Naval Force Capabilities Task Force will meet January 26, 1993, from 9:00 a.m. to 5:00 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss required Naval Force Capabilities in the 21st century. The entire agenda for the meeting will consist of discussion of key issues regarding naval force capabilities and their role in "...From the Sea". These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 22, 1992.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92-31820 Filed 12-30-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

San Francisco Field Office; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy (DOE); San Francisco Field Office.

ACTION: Notice of intent to award a grant on the basis of noncompetitive financial assistance.

SUMMARY: The DOE intends to make a financial assistance award for one year to the City of Livermore in California. The City of Livermore will contract for road improvements to Greenville Road, near the Lawrence Livermore National Laboratory (LLNL) East Gate Entrance Area. All of the work is off-site on property owned by the City and the County of Alameda. The project will require capacity improvements at the Laboratory's East Entrance, plus widening of Greenville Road, south of Patterson Pass Road.

DOE's support for this work will enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct this activity. Congress has appropriated $1.8M in funds for this effort. The period of performance is expected to start January 4, 1993, and expire one year thereafter.

FOR FURTHER INFORMATION CONTACT: Ransome Camp—(510) 273-7172, Contract Specialist, U.S. Department of Energy, San Francisco Field Office, 1333 Broadway, Oakland, California 94612.

Issued in Oakland, CA, December 17, 1992.

Joan Macrusky,

Contracts and Assistance Management Division.

[FR Doc. 92-31826 Filed 12-30-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. EG93-6-000]

Bald Eagle Power Company, Inc.; Notice of Filing

December 24, 1992.

Take notice that on December 21, 1992, Bald Eagle Power Company Inc. (Bald Eagle) filed an application under section 32 of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992, seeking a determination by the Commission that Bald Eagle is an exempt wholesale generator. Bald Eagle intends to own and operate a tidal power facility which is expected to be located offshore of Long Island, New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 11, 1993, and must be served on Bald Eagle. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31785 Filed 12-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-93-000]

Baltimore Gas and Electric Company, Notice of Filing

December 24, 1992.

Take notice that on December 18, 1992, Baltimore Gas and Electric Company (BG&E) tendered for filing an Amendment to its October 30, 1992 filing of the System Energy Sales Agreement between Baltimore Gas and

Electric Company (BG&E) and the Long Island Lighting Company (LILCO) in the above captioned docket. The Amendment consists of changes to Section 6B of the Agreement and Exhibits I and III of the filing. Also, a related Brokering Agreement between the Chicago Energy Exchange of Chicago, Inc. (EEC) and BG&E was included as Attachment C for informational purposes.

BG&E has requested waiver of the Commission's notice requirements to allow an effective date of November 2, 1992, as originally requested.

Copies of the filing were served on the Maryland and New York Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31786 Filed 12-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-127-000]

Trunkline Gas Co.; Request Under Blanket Authorization

December 24, 1992.

Take notice that on December 22, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP93-127-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a delivery point, under the authorization issued in Docket No. CP83-84-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline requests authority to abandon a delivery point located in Galveston County, Texas, on Trunkline's Chocolate Bayou gas supply lateral. It is stated that the measuring facility, located at this delivery point near the Phillips Huff A-1 well, was originally installed pursuant to Docket No. CP91-1730 for interruptible transportation service to Phillips Petroleum Company (Phillips). Trunkline states that Phillips requested the transportation service to provide gas for a gaslift operation at the Huff A-1 well. Since this transportation service will terminate on January 17, 1993, Trunkline states it will no longer need this measuring station as a delivery point and, therefore, desires to abandon the use of the measuring station as a delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31784 Filed 12-30-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4549-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 14, 1992 through December 18, 1992 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-BLM-G02001-NM

Rating 3, Dark Canyon Special Management Area, Oil and Gas Leasing, Permit for Approval to Drill near Carlsbad Caverns National Park, Eddy County, NM.

Summary:

EPA had determined that the DEIS did not adequately assess the potentially significant environmental impacts of the proposal. These impacts are potential threats to unique cave formations as a result of oil and gas development. EPA also believed there are other reasonable alternatives available to BLM, and not considered within the scope of this document, which could reduce or eliminate potentially significant environmental impacts while still achieving the basic project purpose. As currently presented, the Draft EIS fails to satisfy the purposes of NEPA and thus should be formally revised and made available for public comment.

ERP No. DS-BLM-K00001-00 Rating LO

Ward Valley Low-Level Radioactive Waste Disposal Facility, Additional Information concerning Direct Sale Alternative, Site Selection, Construction and Operation, Funding and Right-of-way Grants, San Bernardino County, CA.

Summary:

EPA had no objections to the proposed project. EPA, however, reiterated several requests that had been made in previous comments in terms of clarifying a number of issues as well as recommendations for the project Record of Decision.

Final EISs

ERP No. F-GSA-F81017-MN

Minneapolis Federal Building and U.S. Courthouse Improvement and Expansion or New Construction, Implementation, Hennepin County, MN.

Summary:

EPA continued to express concern that air quality and appropriate construction materials issues were not adequately addressed.

ERP No. F-GSA-G80000-TX

Del Rio Border Station Facilities Expansion, Funding, Val Verde County, TX.

Summary:

EPA had no objections to GSA's selection of their three phase plan, Action Alternative 4.

ERP No. F-VAD-F99008-OH

Cleveland Area National Cemetery Construction and Operation, Site Selection, Franklin, Concord and Guilford Townships, North Ridgeville and Massillon Cities, Summit, Lake, Lorain, Stark and Medina Counties, OH.

Summary:

EPA had no objection to the preferred site selected for the cemetery.

Dated: December 28, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92-31816 Filed 12-30-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4549-7]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075.

Availability of Environmental Impact Statements Filed December 21, 1992, Through December 25, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920504, FINAL EIS, BLM, MT, SD

Billings/Powder River/South Dakota Resource Area, Oil and Gas Resource Management Plan Amendment, Leasing and Development, Mile City District, MT and SD, Due: February 1, 1993, Contact: Lloyd F. Emmon (406) 657-6262.

EIS No. 920505, FINAL EIS, AFS, WY

Shoshone National Forest Oil and Gas Exploration and Development, Leasing, Fremont, Hot Springs Park, Sublette and Teton Counties, WY, Due: February 1, 1993, Contact: Bob Rossman (307) 527-6241.

EIS No. 920506, DRAFT SUPPLEMENT, AFS, UT

Tippets Valley Timber Harvest Project, Timber Sale and Road Construction, Implementation, New Information, Dixie National Forest, Cedar City Ranger District, Iron County, UT, Due: February 15, 1993, Contact: Ronald S. Wilson (801) 865-3200.

EIS No. 920507, DRAFT EIS, USA, CA

Fort Ord Disposal and Reuse Installation, Implementation, Establishment of Presido of Monterey (POM) Annex, Cities of Marina and Seaside, Monterey County, CA, Due: February 15, 1993, Contact: Bob Verkade (916) 557-7423.

EIS No. 920508, DRAFT SUPPLEMENT, FAA, TN

Memphis International Airport Construction and Operation, Updated Information on Nose Analysis, Runway 18L-36R, Relocation of Swinnea Road, portion of Winchester Road and Shelby Drive, Airport Layout Plan (ALP) Approval, Funding and Section 404 Permit, Shelby County, TN, Due: February 15, 1993, Contact: Peggy S. Kelley (901) 544-3495.

Amended Notices

EIS No. 910034, DRAFT EIS, COE, IN

Tillery Hill State Recreation Area Development, Construction, Operation, and Maintenance of Recreation Facilities, Patoka Lake, Orange County, IN, Contact: Keith Hoss (502) 582-6015. Published FR 2-08-91—Officially Withdrawn by Preparing Agency.

Dated: December 28, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92-31817 Filed 12-30-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPT-00129; FRL-4182-9]

Testing for Formaldehyde in New Homes; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that EPA's Office of Pollution Prevention and Toxics will hold an informal public meeting to discuss its plans for a testing program that is focused on characterizing formaldehyde concentrations in newly-constructed conventional and manufactured homes.

DATES: A public meeting will take place on January 28, 1993 from 10:00 am to 5:00 pm.

ADDRESSES: The meeting will take place at the Potowmack Landing Restaurant, 1 Marina Dr., Alexandria Va.

FOR FURTHER INFORMATION CONTACT: Persons interested in attending the public meeting and receiving discussion materials should notify EPA by writing Ms. Karen Helm, American Management Systems, Inc., 1525 Wilson Boulevard, 7th Floor, Arlington, Virginia 22209, (703) 908-5093, FAX (703) 908-5001, on or before January 22, 1993.

SUPPLEMENTARY INFORMATION: EPA is concerned about formaldehyde emitted by urea-formaldehyde (UF) pressed wood products. UF pressed woods include particleboard, hardwood plywood and medium density fiberboard. They are used as interior building materials and as components of doors, cabinets and furniture. Emissions from these products can elevate formaldehyde levels in homes and other indoor settings where they are present and irritate the eyes, noses and respiratory systems of the large number of persons so exposed.

In the **Federal Register** of December 23, 1992 (57 FR 61240), EPA published its 1992 Master Testing List which set forth its chemical testing agenda under the Toxic Substances Control Act (TSCA). Among other priorities, the list identified a need for testing that would characterize formaldehyde levels in conventional and manufactured housing when these homes are new and over a period of time. While the Agency recognizes the efforts of the U.S. pressed wood producing industry throughout the 1980s to lower formaldehyde emissions from their products, EPA believes that it is necessary to obtain results through testing that will help the Agency to resolve some of the outstanding issues related to:

(1) Characterizing likely exposures to formaldehyde in new housing constructed with lower-emitting pressed wood products;

(2) the accuracy of computer models used by the Agency to estimate actual residential formaldehyde exposure arising from pressed wood emissions;

(3) the need, following consideration of formaldehyde's hazards and the exposures evidenced by this testing program, for further reductions in formaldehyde emissions from UF pressed wood products.

EPA has prepared a draft testing program that it believes represents a focused and cost-conscious approach to conducting a formaldehyde exposure testing program in new homes. The draft testing program consists of a two-part investigation: a limited pilot study followed by a more extensive field study. The pilot study is designed as a short-term effort that will help to resolve technical issues associated with carrying out the larger, longer-term study. Overall, however, the program is aimed at addressing the following key issues associated with accurately characterizing formaldehyde in new homes and assessing the need for additional controls to limit exposure in these settings:

(1) What levels of formaldehyde are typically encountered initially by occupants of new homes and how well do current indoor air models account for the observed levels?;

(2) How rapidly do initial formaldehyde levels dissipate?

At the meeting, EPA intends to review the approaches it has considered in assessing the significance of UF pressed wood emissions on formaldehyde levels in new homes and identify key unresolved technical issues that it has encountered in estimating exposure using computer models. The draft testing program will also be discussed, as will technical and practical implementation issues that have been identified as requiring resolution prior to initiation of the testing program.

EPA has not made a final decision as to how it will implement this testing program. EPA would welcome a voluntary agreement whereby industry would undertake the needed testing. If, however, an acceptable voluntary testing program is not obtained within the next several months, the Agency intends to initiate action under section 4 of TSCA to compel such testing by industry. EPA's procedures for requiring the testing of chemical substances under section 4 include the adoption of enforceable consent agreements (ECAs) and, alternatively, promulgation of test rules. ECAs may be adopted where consensus on a test program is reached in a timely manner by EPA, affected manufacturers and/or processors, and other interested parties. Alternatively, once the Agency makes the statutory findings as required under TSCA, then EPA would implement this action by issuing a section 4 test rule.

Dated: December 23, 1992.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics

[FR Doc. 92-31813 Filed 12-30-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100117; FRL-4177-5]

Kevric Company; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Kevric Company has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Kevric Company consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2). This transfer will enable Kevric Company to fulfill the obligations of the contract and serves to notify affected persons.

DATES: Kevric Company will be given access to this information no sooner than January 5, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-D2-0038, Kevric Company will assist the Biological and Economic Analysis Division by gathering economic and biological information on ethylene oxide for a benefits analysis. This contract involves no subcontractor.

The Office of Pesticide Programs has determined that access by Kevric to information on ethylene oxide is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Kevric Company prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Kevric Company is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs.

All information supplied to Kevric Company by EPA for use in connection with this contract will be returned to EPA when Kevric Company has completed its work.

Dated: December 18, 1992.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 92-31810 Filed 12-30-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 23, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW., Suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None.

Title: Expanded Interconnection with Local Exchange Companies Facilities, Memorandum Opinion and Order, CC Docket No. 91-141.

Action: New collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 1,300 responses; .25 hours average burden per response; 325 hours total annual burden.

Needs and Uses: In the attached Memorandum of Opinion and Order (MO&O) in the Expanded Interconnection with Local Telephone Company Facilities proceeding, CC Docket No. 91-141, the Commission modified certain requirements adopted in the Report and Order and Notice of Proposed Rulemaking (which is pending OMB approval) to facilitate the initial implementation of expanded interconnection by Tier 1 LECs for interstate DS1 and DS3 special access services. Specifically, the Commission modified the requirement that the LEC expanded interconnection tariffs encompass all end offices, serving wire centers, and other points relevant for calculating special access rates. Instead, the

Commission required the LECs to file initial tariffs for a subset of their central offices and established new procedures for the tariffing of additional central offices thereafter. This reduces the initial burden on Tier 1 LECs of implementing expanded interconnection. The Commission concluded that this change would permit it to target use of the Commission's administrative resources in the initial implementation of expanded interconnection to achieve more fully its procompetitive goals in the near term, as well as to reduce the burden on all interested parties, including interconnectors, of the initial implementation process. See the above referenced MO&O for full details of the Commission's modifications of expanded interconnection with local telephone company facilities.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-31845 Filed 12-30-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-3350-N-12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 31, 1992.

ADDRESS: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 22, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 92-31428 Filed 12-30-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Intent To Prepare a Draft Supplement to the Final Environmental Impact Statement on the Diamond Fork System and a Draft Environmental Impact Statement for the Irrigation and Drainage System, Bonneville Unit of the Central Utah Project, Colorado River Storage Project

AGENCY: Central Utah Water Conservancy District (Interior).

ACTION: Notice of intent to prepare a draft supplement to a final environmental impact statement and to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and Public Law 102-575, section 205(b) which provides for the Central Utah Water Conservancy District (District) to be considered a "Federal Agency" for the purposes of compliance with all Federal fish, wildlife, recreation, and environmental laws with respect to the use of funds authorized, the District proposes to prepare a Draft Supplement (Draft Supplement FEIS) to the Final Environmental Impact Statement of the Diamond Fork System and a Draft Environmental Impact Statement (DEIS) on the proposed Irrigation and Drainage System of the Bonneville Unit of the Central Utah Project (CUP). The Office of Environmental Affairs, U.S. Department of Interior, will provide NEPA guidance, oversight, and approval during the development and processing of the EIS. The Draft Supplement FEIS would evaluate possible changes in environmental impacts of Monks Hollow Dam and Reservoir and Upper Diamond Fork Pipeline of the Diamond Fork System necessitated by the selection of an alternative for the I&D System different from that presented in the Diamond Fork FEIS. The DEIS will evaluate alternatives of the I&D System and related facilities.

The DEIS for the I&D System will evaluate alternatives for providing supplemental water for irrigation and for municipal and industrial (M&I) users within southern Utah County, eastern Juab County and Sevier River Basin and to increase water efficiency and conservation and enhance the beneficial uses of water under environmentally acceptable conditions.

Public Law 102-525 section 205(a)(1)(2) directs the District to complete the Bureau of Reclamation's 1988 Definite Plan Report and to complete the requirements of NEPA for the specifically authorized features of the I&D System which shall include an analysis of unconstructed features of Diamond Fork System, and alternative irrigation features in the Utah Lake drainage basin.

FOR FURTHER INFORMATION CONTACT: Sheldon H. Talbot, Special Projects Manager, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058, telephone 801-226-7125, SLC Line 801-521-5346, or 800-281-7103 (Utah only) FAX 801-226-7150.

SUPPLEMENTARY INFORMATION: The environmental impacts of construction of the Diamond Fork System were studied and documented by the Bureau of Reclamation's following NEPA documents:

(1) Central Utah Project Bonneville Unit Final EIS, 1973 (INT FES 73-42), 1973.

(2) Diamond Fork Power System Final EIS (INT FES 84-30), 1984.

(3) Diamond Fork System Final Supplement to the Final EIS (FES 90-7), 1990.

The I&D System water supply would be obtained from Strawberry Reservoir by means of a transbasin diversion into Diamond Fork Creek drainage through the recently completed Syar Tunnel and Sixth Water Aqueduct, which is currently under construction by the Bureau of Reclamation. Water from the Aqueduct would be discharged into Sixth Water Creek which would flow downstream into the proposed Monks Hollow Reservoir in Diamond Fork Creek. The amount of CUP imported water would vary from year-to-year depending upon the dry year and wet year water exchange capabilities on the Sevier River System.

Public Law 102-575(202)(a)(1) specifically authorizes construction of the primary water conveyance facility of the I&D System as a pipeline rather than an open canal conveyance system as identified in the Bureau of

Reclamation's 1988 Draft Definite Plan Report. Water for irrigation and M&I uses would be delivered to agricultural lands and communities along the route of the main conveyance pipeline which would be located generally along the base of the Wasatch mountains and east of Highway I–15 (between Santaquin and Nephi).

Water delivered through a main conveyance pipeline to Sevier Bridge Reservoir and commingled with Sevier River water will be studied.

Opportunities for that water to be directly released from the Reservoir into Sevier River for use downstream by farmers in the Delta area will be studied. Delivery of I&D System water above Sevier Bridge Reservoir could be made through exchanges of CUP water in Sevier Bridge Reservoir with upstream water supplies of Sevier River. Upstream storage facilities would be required for implementing exchanges of water from Sevier Bridge Reservoir. The potential capacity of Hatchtown Reservoir and location of the dam will be studied. In order to conserve and more efficiently manage the releases of water from Piute Dam, located on the Sevier River about 70 miles above Sevier Bridge Reservoir, a small regulating reservoir with a capacity of approximately 400 acre-feet would be studied.

Environmental impacts to be studied include wetland, riparian habitat, big game winter range, discharges to natural watercourses, water quality changes from irrigation drainage flows, and disturbances of cultural resources. Opportunities for improving water quality in Sevier Bridge Reservoir and water delivered to users below the reservoir will be studied.

Water efficiency measures that could be developed within the I&D System service area include, but are not limited to: Lining and possibly combining existing canals; on-farm irrigation improvements; and conjunctive use of surface and groundwater within Utah and Juab Counties. Implementation of such measures could provide the opportunity to improve the fishery, habitat within certain portions of the Sevier River System as well as improved water quality of the River and with Sevier Bridge Reservoir.

Any potential changes of environmental impacts within Diamond Fork System and impacts caused by the I&D System on the natural and human environment will be addressed in the proposed Supplemental and Draft Environmental Impact Statements.

Public Scoping Meetings

The Central Utah Water Conservancy District will serve as the lead agency for preparation of the Draft Supplement FEIS and the DEIS in accordance with the National Environmental Policy Act. The District will seek participation from interested members of the public, including landowners, public officials, agency representatives, special interest groups, and individuals through a series of scoping meetings scheduled to be held early in March 1993. Another notice will be published in the Federal Register which will establish the date, time and place for each of the scoping meetings.

Dated: December 24, 1992.

Harold N. Sersland,

Environmental Programs Manager.

[FR Doc. 92–31771 Filed 12–30–92; 8:45 am]

BILLING CODE 4310–RG–M

Intent To Prepare a Draft Environmental Impact Statement for Wasatch County Water Efficiency Project for the Central Utah Project, Colorado River Storage Project

AGENCY: Central Utah Water Conservancy District (Interior).

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and Public Law 102–575, section 205(b) which provides for the Central Utah Water Conservancy District (District) to be considered a "Federal Agency" for the purposes of compliance with all Federal fish, wildlife, recreation, and environmental laws with respect to the use of funds authorized, the District proposes to prepare a Draft Environmental Impact Statement (DEIS) on the Wasatch County Water Efficiency Project as described in Public Law 102–575 section 202(a)(3) of the Central Utah Project Completion Act. The Office of Environmental Affairs, U.S. Department of the Interior will provide NEPA guidance, oversight, and approval during the development and processing this EIS. The DEIS will also address related projects as the Daniels Creek Replacement (section 303(b)(3)(c) CUP Completion Act. In conjunction with these two features, a plan to improve the natural sinousity of the Provo River channel from Jordanelle Dam to Deer Creek Reservoir will be studied. Also in accordance with section 207(a), the project will seek to develop cost-effective and environmentally sound methods of conserving water.

FOR FURTHER INFORMATION CONTACT: Kirt Carpenter, Assistant Project Director, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058, telephone 801–226–7125, SLC Line 801–521–5346, or 800–281–7103 (Utah only), FAX 801–226–7150.

SUPPLEMENTARY INFORMATION: The scope of the Wasatch County Water Efficiency Project is to array the "universe of opportunities" within Wasatch County with the objective to: (1) Improve the efficiency of both agriculture and M&I water use, (2) simultaneously restore and/or improve environmental resources using water made available by water conservation/efficiency and, (3) modify design project features to maximize environmental benefits while serving development interests.

Public Scoping Meetings

The Central Utah Water Conservancy District will serve as the lead agency for preparation of the DEIS in accordance with the National Environmental Policy Act. Several potential alternative project feature combinations could be developed to satisfy identified needs in the project area. The public scoping process will be used to identify alternatives to be considered in the DEIS. Scoping meetings have been scheduled for the following times and locations:

7pm Tuesday, February 2, 1993, Salt Lake County Government Center, Commission Chamber, 2001 S. State St., Salt Lake City, Utah
7pm Wednesday, February 3, 1993, Utah County Commission Chamber, 100 E. Center Street, Provo, Utah
7pm Thursday, February 4, 1993, Wasatch County High School, 64 E. 600 S, Heber, Utah

A DEIS is expected to be available for public review and comment by early 1994.

Dated: December 24, 1992.

Harold N. Sersland,

Environmental Programs Manager.

[FR Doc. 92–31772 Filed 12–30–92; 8:45 am]

BILLING CODE 4310–RG–M

Intent To Prepare a Draft Environmental Impact Statement for the Uinta Basin Replacement Projects for the Uintah Unit of the Central Utah Project, Colorado River Storage Project

AGENCY: Central Utah Water Conservancy District (Interior).

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy

Act of 1969, as amended, and Public Law 102–575, section 205(b) which provides for the Central Utah Water Conservancy District (District) to be considered a "Federal Agency" for the purposes of compliance with all Federal fish, wildlife, recreation, and environmental laws with respect to the use of funds authorized, the District proposes to prepare a Draft Environmental Impact Statement (DEIS) on a reformulated plan for the Uintah Unit of the Central Utah Project under the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105). The Office of Environmental Affairs, U.S. Department of the Interior will provide NEPA guidance, oversight, and approval during the development and processing of this EIS. This DEIS will also evaluate the McGuire Draw Reservoir identified in the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575). The purpose of the Uinta Basin Replacement Project authorization is to increase efficiency, enhance beneficial uses, and achieve greater water conservation within the Uinta Basin by developing project features which are less costly, more feasible and environmentally acceptable than the large reservoirs planned by the Bureau of Reclamation.

FOR FURTHER INFORMATION CONTACT: Terry Holzworth, Assistant Project Director, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058, telephone 801–226–7127, 801–521–5346, or 800–281–7103 FAX 801–226–7150.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation, U.S. Department of the Interior, filed a Draft Environmental Impact Statement for the Uintah Unit dated July 19, 1978. No Final Environmental Impact Statement was filed and the Notice of Intent for the EIS was withdrawn January, 1992. The Central Utah Project Completion Act directs the District to evaluate alternatives to the previously authorized and planned Uintah Unit. The District has used an extensive public pre-scoping process to identify opportunities to fulfill the purposes of the legislation authorizing the Uintah Basin Replacement Project. Many project features and beneficiaries have been identified which will be evaluated and combined into project alternatives for detailed review and analysis. The primary need identified in the Uinta Basin is water storage and regulation to permit the use of the available water supply in late summer. Other needs include reduction of high spring flood flows which annually damage riparian habitat and stream fishery values, the stabilization or elimination of high mountain irrigation reservoirs located in the High Uinta Wilderness Area, and provision for minimum stream flows in the Uinta and White Rocks rivers late in the summer season. An additional need is to improve existing irrigation delivery systems, primarily canals, and to conserve water which could then be held in storage for late season use. There is not a sufficient flow late in the season to meet the needs which have been identified, i.e., irrigation or fishery without providing storage of the water supply for river flow regulation.

Public Scoping Meetings

The Central Utah Water Conservancy District will serve as the lead agency for preparation of the DEIS in accordance with the National Environmental Policy Act. Several potential alternative project feature combinations could be developed to satisfy the needs of the project area. The public scoping process will be used to identify alternatives which will be analyzed in the DEIS. Scoping meetings have been scheduled for the following times and locations:

7 p.m., Tuesday, January 19, 1993, Multi Purpose Room USU Extension Building, Roosevelt, Utah
7 p.m., Thursday, January 21, 1993, Ute Tribe Auditorium, Fort Duchesne, Utah
7 p.m., Tuesday, January 26, 1993, Salt Lake County Government Center, Commission Chamber, 2001 S. State St., Salt Lake City, Utah

A second round of scoping meetings will be scheduled later in the year to review alternatives which will be formulated based on input received at the initial scoping meetings. A DEIS is expected to be available for review and comment early in 1995.

Dated: December 24, 1992.

Harold N. Sersland,

Environmental Programs Manager.

[FR Doc. 92–31773 Filed 12–30–92; 8:45 am]

BILLING CODE 4310–RG–M

Intent To Prepare a Draft Environmental Impact Statement for Uinta Basin Replacement Projects for the Upalco Unit of the Central Utah Project, Colorado River Storage Project

AGENCY: Central Utah Water Conservancy District (Interior).

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and Public Law 102–575, section 205(b) which provides for the Central Utah Water Conservancy District (District) to be considered a "Federal Agency" for the purposes of compliance with all Federal fish, wildlife, recreation, and environmental laws with respect to the use of funds authorized, the District proposes to prepare a Draft Environmental Impact Statement (DEIS) on a reformulated plan for the Upalco Unit of the Central Utah Project under the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105). The Office of Environmental Affairs U.S. Department of the Interior will provide NEPA guidance, oversight, and approval during the development and processing of this EIS. This DEIS will also evaluate the Farnsworth Canal Rehabilitation, Pigeon Water Reservoir, and the Clay Basin Reservoir identified in the Reclamation Projects Authorization and Adjustment Act of 1992 (Pub. L. 102–575). The purpose of the Uinta Basin Replacement Projects authorization is to increase efficiency, enhance beneficial uses, and achieve greater water conservation within the Uinta Basin by developing project features which are less costly, more feasible and environmentally acceptable than the large reservoirs planned by the Bureau of Reclamation.

FOR FURTHER INFORMATION CONTACT: Terry Holzworth, Assistant Project Director, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058, telephone 801–226–7127, 801–521–5346, or 800–281–7103, FAX 801–226–7150.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation, U.S. Department of Interior filed a Final Environmental Statement (INT FES 80–10) on the Upalco Unit on March 12, 1980 and a Record of Decision was signed by the Secretary of Interior in 1980. However, construction of the features included in the selected alternative was initiated. The Central Utah Project Completion Act requires the District to develop alternatives to the Upalco project plans previously developed by the Bureau of Reclamation, under the authorization for the Upalco Unit. The District has used an extensive public pre-scoping process to identify opportunities to fulfill the purposes of Public Law 102–575 authorizing the Uinta Basin Replacement Project. Many project features and beneficiaries have been identified which will be evaluated and combined into project alternatives for further review and analysis. The primary need in the Uinta Basin is storage to permit the use of the available water supply in late summer. Other needs include provision for minimum stream flows, stabilization or elimination of existing small reservoirs in the High Uinta and Wilderness Area used for irrigation storage, and improvement of riparian and fishery values along the Yellowstone and Lake Fork River stream channels. An additional need is to improve existing delivery systems, primarily canals, and to conserve water which can then be held in storage for late season use. The need for the protection or replacement of wetlands which the irrigation facilities have created was also identified. Even though the Upalco Unit area has limited water storage facilities, there is insufficient late season water supply to meet the irrigation and fishery needs which have been identified without developing facilities to regulate flows or provide opportunities for conservation of the present water supplies.

Several potential alternative project feature combinations could be developed to satisfy identified needs in the project area. The public scoping process will be used to identify alternatives to be considered in the DEIS.

Public Scoping Meetings

The Central Utah Water Conservancy District will serve as the lead agency for preparation of the DEIS in accordance with the National Environmental Policy Act. Scoping meetings have been scheduled for the following times and locations:

7 pm Wednesday, January 20, 1993, Altamont High School Auditorium, Altamont, Utah
7 pm Thursday, January 21, 1993, Ute Tribe Auditorium, Fort Duchesne, Utah
7 pm Thursday, January 28, 1993, Salt Lake County Government Center, Commission Chamber, 2001 S. State St., Salt Lake City, Utah

A second round of scoping meetings will be scheduled later in the year to review alternatives which will be formulated based on input received in the initial scoping meetings. A DEIS is expected to be available for review and comment in early 1995.

Dated: December 24, 1992.

Harold N. Sersland,

Environmental Programs Manager.

[FR Doc. 92-31774 Filed 12-30-92; 8:45 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

[CA-020-4320-02-ADVB]

Grazing Advisory Board; Meeting

AGENCY: Susanville District Grazing Advisory Board, Susanville, California, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of Interior's discretionary authority on May 14, 1986, will meet on February 11, 1993.

The February 11, 1993 meeting will begin at 10 a.m. at the Alturas Resource Area Office, Bureau of Land Management, 608 West 12th Street, Alturas, California.

The meeting will consist of a discussion on how to deal with the drought in the 1993 grazing season, a review of new allotment management plans, an update on the East Lassen Integrated Vegetation Management Plan, an update on the Wild Horse and Burro Program, a progress report for FY 1993 range improvement projects and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 p.m. to 4:30 p.m. on February 11, 1993 or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130 by February 1, 1993. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board Meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

John W. Bosworth,

Acting District Manager.

[FR Doc. 92-31794 Filed 12-30-92; 8:45 am]

BILLING CODE 4310-41-M

[CA-050-03-4333-12]

Off-Road Vehicle Designation Changes; King Range National Conservation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given related to the use of off-road vehicles in accordance with regulations contained in 43 CFR 8342.3. Approximately 50 acres within the zone lying between the ordinary tide levels (foreshore) from Telegraph Creek in section 9, T.5S., R.1E., HM to Gitchell Creek in section 20, T.4S., R.1E., HM are temporarily changed from an "OPEN" designation to a "LIMITED" designation. During the winter, only those vehicles less than 50 inches in width are allowed to operate in this area.

DATES: The effective date of this designation change is December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Area Manager, 1125 16th Street, rm. 219, Arcata, CA 95521, telephone: (707) 822-7648.

SUPPLEMENTARY INFORMATION: The purpose of this designation change is to protect persons, property, and public lands and resources. Due to storm activity during the winter months, the access route to the beach zone (previously designated open to all types of vehicles year round) becomes too narrow and steep to provide safe passage for vehicles over 50 inches in width. A post and cable barrier was installed to reduce the safety hazard but larger vehicles continued to access the beach area. This temporary designation change will help keep these larger vehicles off this narrow, unsafe access route because the beach will now be closed to this type of use. The closure to larger vehicles will remain in effect through the winter months or until storms subside and the ramp is repaired and safe to use.

Dated: December 15, 1992.

Daniel E. Averill,

Acting Area Manager.

[FR Doc. 92-31805 Filed 12-30-92; 8:45 am]

BILLING CODE 4310-40-M

[AZ-020-03-04210-04; AZA 26359-A]

Exchange of Public Lands; Mohave Co., AZ

AGENCY: Bureau of Land Management (BLM), Interior.

REALTY ACTION: Exchange of public lands, Mohave County, Arizona.

Public land described within the following is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 20, N., R. 17 W.,
  Sec. 4, lots 5 and 10, SW¼, and an aliquot portion of lots 6, 9 and the W½SE¼ to include the right-of-way of The Atchison, Topeka and Santa Fe Railway Company railroad right-of-way, Phx 054068.

Containing 245 acres, more or less.

Prior to disposal, a survey will be completed to legally describe the public land to be conveyed.

In exchange, the United States will acquire the following described mineral estate from The Atchison, Topeka and Santa Fe Railway Company (AT&SF):

Black Mountains

T. 22 N., R. 20 W.,
  Sec. 5, lots 1 to 4, incl., S½N½, S½;
  Sec. 7, lots 1 to 4, incl., E½, E½W½.
T. 22 N., R. 21 W.,
  Sec. 1, lots 1 to 4, incl., S½N½, S½.
T. 23 N., R. 21 W.,
  Sec. 3, lots 1 to 4, incl., S½N½, S½;
  Sec. 9, all.
T. 24 N., R. 21 W.,
  Sec. 27, all;
  Sec. 33, N½, E½SW¼,
    S½S½NW¼SW¼, SW¼SW¼, SE¼.
T. 25 N., R. 21 W.,
  Sec. 7, lots 1 to 4, incl., E½, E½W½;
  Sec. 9, all;
  Sec. 19, lots 1 to 4, incl., E½, E ½W½.
T. 26 N., R. 21 W.,
  Sec. 19, lots 1 to 4, incl., E½, E½W½;
  Sec. 31, lots 1 to 4, incl., E½, E ½W½.
T. 25 N., R. 22 W.,
  Sec. 1, lots 1 to 4, incl., S½N½, S½;
  Sec. 3, lots 1 to 4, incl., S½N½, S½;
  Secs. 11, 13, 15, 23, all.

Cottonwood Creek

T. 23 N., R. 12 W.,
  Sec. 11, W½;
  Sec. 13, NW¼, W½SW¼;
  Sec. 23, SW¼NE¼, NW¼, NE¼SW¼,
    N½SE¼;
  Secs. 25, 27, 35, all.
T. 23 N., R. 13 W.,
  Secs. 23, 27, all.

Hualapai Mountain Research Natural Area

T. 19 N., R. 15 W.,
  Sec. 5, lots 1 to 4, incl., S½N½, S½;
  Sec. 17, W½;
  Sec. 29, W½.
T. 20 N., R. 15 W.,
  Sec. 33, NW¼.

McCracken Desert Tortoise Habitat

T. 13 N., R. 14 W.,
  Sec. 7, lots 1 to 4, incl., E½, E½W½;
  Sec. 27, all.
T. 13 N., R. 15 W.,
  Sec. 3, lots 1 to 4, incl., S½N½;
  Sec. 21, W½, W½SE¼.

The above-described mineral estate contains 18,988.20 acres, more or less.

Appraisals will be approved for the public lands and private mineral estates. Should additional private mineral estate be needed for an equal value exchange, minerals will be offered within the Lake Mead National Recreation Area.

In the exchange, the United States will consolidate minerals under areas of critical environmental concern allowing for the management and protection of important wildlife habitat, riparian and recreation values and outstanding cultural resources.

The public lands will be conveyed under the following terms and conditions: (a) Reservations: To the United States for ditches and canals under the Act of August 30, 1890 and; to the Department of Energy for transmission line and access road right-of-way Phx 085710.

(b) Subject to right-of-way: A 10163, Citizens Utilities Rural Co. telephone line; A 10203, Four Corners Pipe Line Co. access road; A 16833, Citizens Utilities Co. Inc. transmission line and; Phx 054068 AT&SF Railroad Co. railroad.

For a period of 45 days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 21, 1992.

David J. Miller,

District Manager.

[FR Doc. 92-31796 Filed 12-30-92; 8:45 am]

BILLING CODE 4310-32-M

[AZ-920-03-4210-04; AZA 25355A]

Arizona; Exchange of Public and Private Lands, Pima County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and NTS Investments, Inc. The United States transferred 239.34 acres in Pima County, and NTS Investments, Inc., conveyed 1,050.00 acres in Pima County.

FOR FURTHER INFORMATION CONTACT: Evelyn Stob, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640-5534.

SUPPLEMENTARY INFORMATION: On October 29, 1992, the Bureau of Land Management transferred the following described land by Deed No. AZ-93-003, pursuant to the Federal Land Policy and Management Act of 1976:

Gila and Salt River Meridian, Arizona

T. 14 S., R. 16 E.,
  Sec. 7, SW¼NE¼, W½SE¼NE¼, E½E½
    SW¼, E½W½E½SW¼, SW¼SW¼
    SE¼SW¼, W½E½SE¼, W½SE¼;
    except therefrom the south 40 feet lying
    in the right-of-way of East Broadway
    Boulevard as shown on the Road Map
    recorded in Book 6 of Road Maps, page
    96, records of Pima County, Arizona.

Containing 239.34 acres, more or less, in Pima County.

In exchange, the following described land was conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 17 S., R. 18 E.,
  Sec. 16, all;
  Sec. 26, M&B in W½.
T. 18 S., R. 18 E.,
  Sec. 11, NE¼, E½SE¼NW¼, E½NE¼
    SW¼, NW¼SE¼.

Containing 1,050.00 acres, more or less, in Pima County.

The values of the Federal public land and the private land in the exchange were appraised at $2,150,000.00 and $2,152,500.00, respectively. The equalization payment of $2,500.00 due from the United States was waived by NTS Investments, Inc.

The purpose of this exchange was to achieve more efficient management of the public land through consolidation of ownership and the acquisition of unique natural resource lands. The public interest was served through completion of this exchange.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 92-31790 Filed 12-30-92; 8:45 am]

BILLING CODE 4310-32-M

[OR-943-4210-06; GP3-072; ORE-016435A]

Proposed Continuation of Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a portion of the land withdrawal for a scenic and recreation zone continue for an additional 20 years and requests that the lands involved remain closed to mining.

DATE: Comments should be received by March 31, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the existing land withdrawal made by Public Land Order No. 3854 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

Wallowa-Whitman National Forests

Lostine River and Roadside and Riverfront Zone Addition, 120 acres in Secs. 24, 25, and 36, T. 3 S., R. 43 E., W.M., Wallowa County, approximately 13 miles southwest of Enterprise.

The purpose of the withdrawal is to protect the roadside and waterfront areas. The withdrawal currently segregates the lands from operation of the mining laws. The Forest Service requests no changes in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination of the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: December 16, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-31795 Filed 12-30-92; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Reclamation

Management of Revenues From Reclamation Projects and Project Lands

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation (Reclamation) is conducting a review of project specific legislation, repayment contracts and amendments, and current Reclamation practices as they apply to revenues collection and crediting/disposition. This notice advises the water districts that inappropriate direct (front end) crediting of revenues will be discontinued effective January 1, 1994. If the results of the review reveal that revenues were improperly credited to the districts during calendar year 1993, those revenues must be repaid to Reclamation with interest of 7.040 percent, as established by the Department of the Treasury.

FOR FURTHER INFORMATION CONTACT: Ms. Jaralyn Beek, Revenues Management Section, U.S. Bureau of Reclamation, D-5612, P.O. Box 25007, Denver, Colorado, 80225, telephone (303) 236-0938.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation is currently researching project-specific legislation as it relates to the collection and disposition of revenues generated from the incidental use of Reclamation water projects and project lands. In addition to researching the legal requirements, Reclamation is also reviewing repayment contracts and amendments, as well as Reclamation practices as they pertain to collection and crediting/disposition of those revenues.

Revenues disposition is governed by Reclamation law, project-specific legislation, the source of revenues and, if applicable, whether the land is public domain or was acquired by Reclamation either by purchase, exchange, or condemnation. Since Reclamation does not have the option to dispose of revenues differently than that required by law, the intent of this review is to ensure that revenue crediting follows legal requirements.

Revenues generated by the incidental use of Reclamation projects and project lands are generally broken down into three primary categories. These are:

(1) Revenues which may be distributed as a general credit to the Reclamation fund;

(2) Revenues which may be distributed as a "back end" credit to the construction costs; and (3) Revenues which may be distributed as a "front end" or direct credit to the annual obligations of the water users.

The revenues which are distributed as a general credit to the Reclamation fund are not meant to be spent on specific functions or projects, but rather are accessible only as directed by the laws which govern the Reclamation fund. These revenues generally are from withdrawn lands which were contributed at no cost to the project by the United States, and intended to increase the size of the Reclamation fund for use in building reclamation projects.

The second type of disbursement, a back end credit (also termed a credit to the project), involves directing the funds to specific accounts within the Reclamation fund. A back end credit is disbursed to an account associated with the construction obligation of a specific project. Fixed yearly payments on the construction obligation have been amortized and are repaid by the beneficiaries (districts), with the back-end credit being applied against the last payment due in the repayment schedule. With this type of disbursement of revenues, the net result is accelerated repayment of the project's construction cost, without relieving the project users of their requirement to pay their annual obligation.

The third type of revenue disposition is termed a front-end or a direct credit. The water user could receive benefit from the direct crediting of revenues only from specified sources: (1) Power plants; (2) leasing of project grazing and farm lands; and (3) the sale or use of town sites. This type of credit is also an application of revenues against the construction obligation for the project. The primary difference between the back end credit, previously described, and a front end credit is that the front end or direct credit is used to satisfy a water users' current construction payment. Any revenues in excess of the annual construction payment are to be applied against the annual operation and maintenance expenses of the district. This type of crediting assists the water user or district in meeting current obligations rather than accelerating the repayment of the construction obligation, and applies to only a limited number of contracts written prior to 1938.

Effective January 1, 1994, Reclamation will discontinue crediting of all inappropriate direct credits. Additionally, if a district inappropriately receives credit for revenues during calendar year 1993, those revenues must be repaid to Reclamation, with interest of 7.040 percent, as established by the Department of the Treasury.

Dated: December 23, 1992.

Joe D. Hall,

Deputy Commissioner, Bureau of Reclamation.

[FR Doc. 92-31695 Filed 12-30-92; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Big Spring Spinedace for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the threatened Big Spring spinedace, *Lepidomeda mollispinis pratensis*. This subspecies currently inhabits that portion of the Meadow Valley Wash which flows through Condor Canyon, and historically occupied the outflow stream from Big Spring, both near Panaca, Lincoln County, Nevada. The Service

solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before March 1, 1993, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Reno Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C-125, Reno, Nevada, 89502 (phone: 702-784-5870) or Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon, 97232-4181 (phone: 503-231-6241). Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow, Field Supervisor, at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada address.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Withers at the above Reno, Nevada address (telephone 702-784-5227).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plans to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification or delisting, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Big Spring spinedace are endemic to the Meadow Valley Wash near Panaca, Lincoln County, Nevada. This subspecies has been extirpated from its type locality, Big Spring, and was considered extinct in 1960. In 1977, a population of Big Spring spinedace was discovered in the Condor Canyon section of Meadow Valley Wash, just north of Big Spring. The principle causes of decline for this subspecies are habitat modification and non-native fish introductions. Recovery efforts will focus on (1) maintaining the Condor Canyon population, and (2) establishing additional populations in suitable habitats.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority of this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 21, 1992.

William Martin,

Regional Director.

[FR Doc. 92-31806 Filed 12-30-92; 8:45 am]

BILLING CODE 4310-55-M

Management Plans for Alaskan Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of management plans for polar bear, sea otter and walrus in Alaska.

SUMMARY: The U.S. Fish and Wildlife Service (Service), with the assistance of the Marine Mammal Commission, has produced draft management plans for polar bear, sea otter and walrus in Alaska. By this notice, the public is informed that these plans are available beginning January 15, 1993, and that interested individuals may obtain copies by request to the Service.

DATES: Comments on the draft management plans must be received by February 28, 1993.

ADDRESSES: Written requests for copies should be addressed to: U.S. Fish and Wildlife Service, Marine Mammals Management, 4230 University Drive, suite 310, Anchorage, AK 99508. Phone requests may be made by calling (800) 362-5148 or (907) 271-2394.

FOR FURTHER INFORMATION CONTACT: Scott Schliebe (polar bear), Anthony DeGange (sea otter), or Dana Seagars (walrus) at the U.S. Fish and Wildlife Service, Marine Mammals Management, 4230 University Drive, room 310, Anchorage, AK 99508, (800) 362-5148 or (907) 271-2394.

SUPPLEMENTARY INFORMATION: A series of public meetings to discuss the contents of the management plans will be held in Alaska during the comment period. A list of the dates, times and locations of the public meetings also is available.

Dated: December 16, 1992.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 92-31802 Filed 12-30-92; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Cooperative Agreement, FirstMiss Gold Time et al.

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a collaborative effort between the U.S. Geological Survey and FirstMiss Gold Inc. and Pinson Mining Co. has been granted to study the chemical mobility of gold and associated elements in ground water around buried disseminated gold deposits along the Getchell Trend in northern Nevada.

DATES: This action is effective as of November 25, 1992, for a duration of 12 months.

ADDRESSES: Copies of the Memorandum of Agreement are available for inspection upon request at the following location: U.S. Geological Survey, Branch of Geochemistry, Box 25046, MS 973, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. David Grimes of the U.S. Geological Survey, Branch of Geochemistry, at the address given above; telephone (303) 236-5510.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 92-31791 Filed 12-30-92; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

Alaska Outer Continental Shelf Region; Proposed 1995 Beaufort Sea Lease Sale 144, et. al; Request for Interest and Information

Purpose

The Beaufort Sea, Chukchi Sea, and Hope Basin proposed Outer Continental Shelf (OCS) Oil and Gas Lease Sales 144, 148, and 159, respectively, have been designated as areas proposed for consideration for leasing in the Comprehensive OCS Natural Gas and Oil Resource Management Program 1992–1997. This Request for Interest and Information is being issued as part of our Information Base Review (IBR) and planning and consultation process to assess the completeness and quality of information to be used in analyses to support decisions on leasing. The oil and gas industry is asked to assist in this process by providing up-to-date information on its interest in leasing and conducting oil and gas operations within the Beaufort Sea, Chukchi Sea, and Hope Basin Planning Areas. Other information requested from all parties includes recent geophysical data, recent geological data, biological, archaeological, environmental, or socioeconomic data, recent interpretation of existing data, and recent estimates of cost of production.

This request is designed to provide a broad overview of information. By requesting and assessing industry interest, existing biological, environmental, and economic information early in the planning process, the risks of inappropriate expenditures or potential conflicts will be reduced.

The IBR will include an Information Transfer Meeting in Anchorage, Alaska, January 20, 21, and 22, 1993. We will then make a determination whether to continue with the Area Evaluation and Decision Process (AEDP) for these proposed sales. Subsequent steps in the AEDP are: Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement (EIS), Area Identification, draft EIS, proposed Notice of Sale, Public Hearings, final EIS, Consistency Determination, and Notice of Sale. For Alaska sales, the entire process takes approximately 42 months.

Description of the Areas

Beaufort Sea Planning Area

The area under consideration for leasing in the Beaufort Sea Planning Area, is depicted by the shaded area on the attached map labeled Beaufort Sea. It includes approximately 5,420 blocks in water depths from 7 feet to approximately 10,000 feet, at distances of 3 miles to approximately 140 miles from shore.

Drilling on the Beaufort Sea OCS began in 1981, and 25 exploratory wells have been drilled on Federal or Federal/State disputed tracts as of November 1, 1992. Eight wells have been determined to be producible. Additionally, a discovery was announced by ARCO Alaska, Inc., on October 14, 1992, as a result of their Kuvlum #1 exploration well.

Chukchi Sea Planning Area

The area under consideration for leasing in the Chukchi Sea Planning Area, is depicted by the shaded area on the attached map labeled Chukchi Sea. It includes about 4,695 blocks in water depths from 33 feet to approximately 300 feet, at distances of 4 miles to approximately 230 miles from shore.

Drilling on the Chukchi Sea OCS began in 1989, and 4 exploratory wells have been drilled. None of the wells drilled have been determined to be producible.

Hope Basin Planning Area

The area under consideration for leasing in the Hope Basin Planning Area is depicted by the shaded area on the attached map labeled Hope Basin. It includes approximately 900 blocks in water depths from 3 feet to approximately 200 feet, at distances of 6 miles to approximately 100 miles from shore.

No lease sales have been held in the Hope Basin Planning Area and no exploratory wells have been drilled.

Respondents are advised that Official Protraction Diagrams of the Beaufort Sea and Hope Basin Planning Areas are presently based on the North American Datum 1927 (NAD 27). These two planning areas will, however, be converted to NAD 83 prior to the scheduled sale date. The Chukchi Sea Planning Area has already been converted from NAD 27 to NAD 83.

Larger scale maps with complete descriptions of the planning areas are available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508–4302, telephone (907) 271–6621.

Instructions on Request for Interest and Information

Information regarding leasing and conducting oil and gas operations in the Beaufort Sea, Chukchi Sea, and Hope Basin Planning Areas may be provided by mail, telephone, or alternatively, an informal meeting with the Regional Director or designated representative. General or detailed information may be submitted. We request that you provide information on the following:

(1) What level of interest do you have (HIGH, MEDIUM, or LOW) in leasing and conducting oil and gas operations in any of these areas at this time?

(2) Would your level of interest in any of these areas change if oil and gas prices increase?

(3) What are your views on the completeness and quality of information on environmental, social, biological, and coastal zone management concerns relevant to proceeding with the presale process for each of these areas?

(4) What recent biological, archaeological, environmental or socioeconomic data are you aware of and/or can you share with us?

(5) Is your company spending money on any oil and gas activities in these areas or are expenditures anticipated on activities such as geological and geophysical work, etc.?

(6) What recent geophysical and/or geologic new interpretations of existing data are you aware of and/or can share with us?

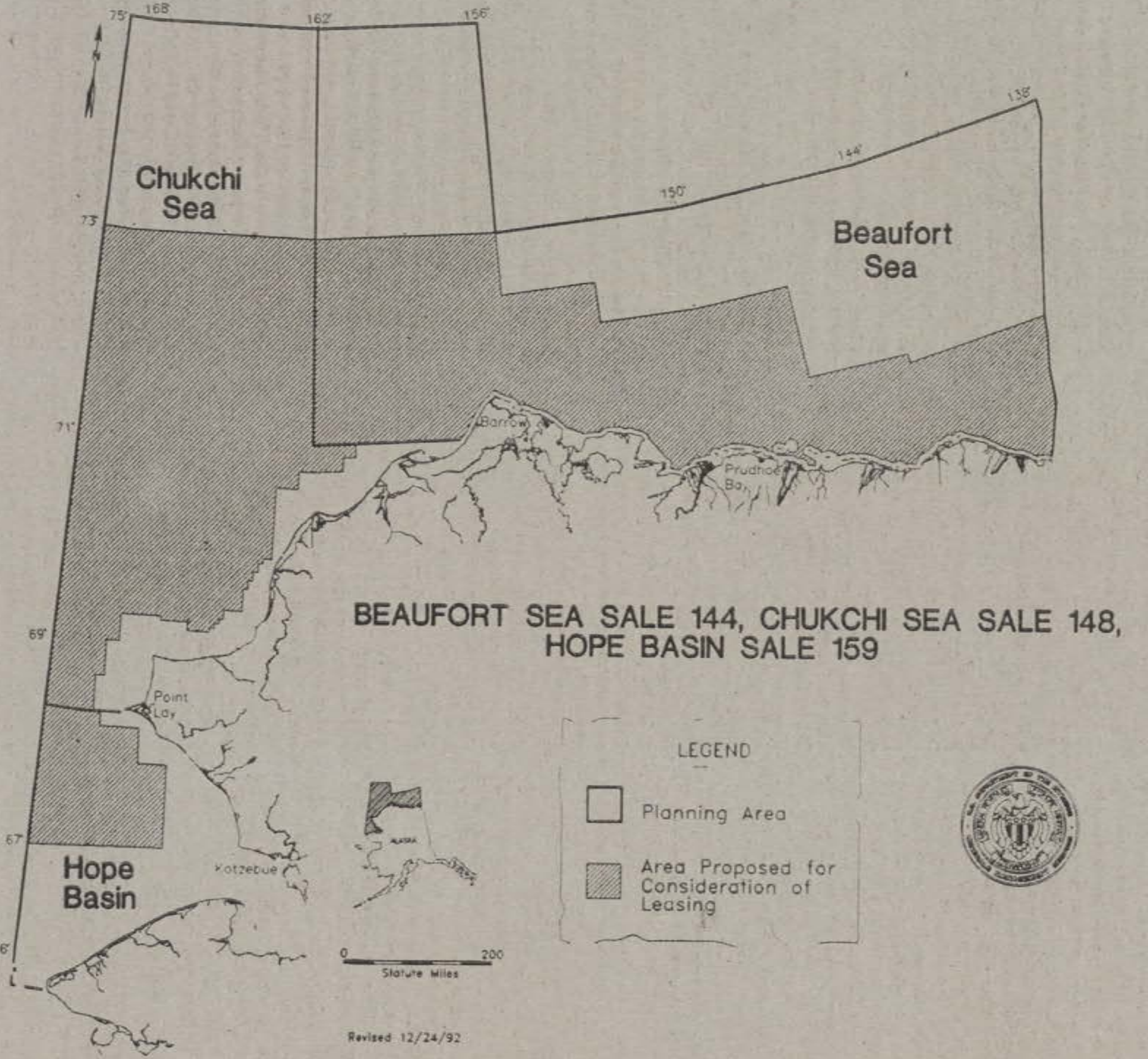
In order to be included in the review process, information on each of these planning areas must be submitted no later than 30 days following publication of this document in the **Federal Register**. Consideration of the information will be facilitated if separate envelopes are provided and marked "Request for Interest and Information on Proposed Lease Sale 144, Beaufort Sea; Proposed Lease Sale 148, Chukchi Sea; or Proposed Lease Sale 159, Hope Basin." The telephone number and name of the person to contact in the respondent's organization for additional information should also be included. Letters should be mailed or hand delivered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, 949 East 36th Avenue, room 603, Anchorage, Alaska 99508–4302. Telephone responses may be made to Mr. Tom Warren at (907) 271–6691.

Dated: December 24, 1992.

Alan D. Powers,

Regional Director, Alaska OCS Region.

BILLING CODE 4310-MR-M



[FR Doc. 92-31766 Filed 12-30-92; 8:45 am]

BILLING CODE 4310-MR-C

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0041), Washington, DC 20503, telephone 202–395–7340.

Title: Part 773—Requirements for Permits and Permit Processing.

OMB Number: 1029–0041.

Abstract: Ensures that applicants for permanent program permits or their associates, who are in violation of the Surface Mining Control and Reclamation Act do not receive or maintain Surface Mining permits.

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: State Regulatory Authorities and Mining Company officials.

Annual Responses: 4,368.

Annual Burden Hours: 9,233.

Estimated Completion Time: 2 hours.

Bureau clearance officer: John A. Trelease (202) 343–1475.

Dated: December 14, 1992.

Andrew F. DeVito,

Acting Chief, Division of Technical Services.

[FR Doc. 92–31797 Filed 12–30–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Proposed Termination of Final Judgment; Linen Supply Institute of Greater New York, Inc., et al.

Notice is hereby given that defendant General Linen Supply & Laundry Co., Inc., defendant Cascade Linen Supply Corp. of N.J., and NUS, Inc., as successor by acquisition of substantial assets of each of three of the other defendants in *United States* v. *Linen Supply Institute of Greater New York, Inc., et al.*, Civ. No. 99–387 S.D.N.Y., have filed with the United States District Court for the Southern District of New York a motion to terminate the Final Judgment in this case. The Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the Final Judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice.

The Original Complaint in this case was filed on April 6, 1955. The Amended Complaint charged that the defendants—eight linen suppliers and two trade associations—had combined and conspired in unreasonable restraint of trade and commerce in linen supplies in New York and New Jersey, and had combined and conspired to monopolize trade and commerce in linen supplies in New York and New Jersey. The Amended Complaint alleged that the defendants, in formulating and affectuating the conspiracy, among other things, allocated customers among themselves, refrained from competing with each other for the customers so allocated, restricted the liberty of customers to be served by a linen supplier of their own choice, and impeded, injured, obstructed, harassed, or bought out other linen suppliers in order to compel them to join the conspiracy or exclude them from the industry.

The Final Judgment (entered on August 6, 1958) prohibits each defendant from directly or indirectly entering into, adhering to, or enforcing any agreement or understanding with any other linen supplier to do any of the following: Fix prices, exchange price lists, exchange customer lists, allocate markets, territories, or customers, or hinder or harass any person engaged in the linen supply business. The Final Judgment also prohibits each defendant, acting independently, from harassing, threatening, or spreading false information about any other linen supplier.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the Final Judgment would serve the public interest. Copies of the Original Complaint, the Amended Complaint, the Final Judgment, the Stipulation containing the Department's consent, the Department's Memorandum, motion papers and all further papers filed with the Court in connection with this motion will be available for inspection at room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202–514–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Final Judgment to the Department. Such comments must be received within the sixty-day period established by court order, and will be filed with the Court by the Department. Comments should be addressed to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, New York, New York 10278 (telephone: 212–264–0390).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–31798 Filed 12–30–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—UNIX International, Inc.

Notice is hereby given that, on November 5, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX"), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of UNIX effective on October 22, 1992: Software AG, Darmstadt, Germany; British Telecom, Milton Keynes, Great Britain; Visix Software, Reston, VA; Ingram Micro, Santa Anna, CA; Sandia National Laboratories, Albuquerque, NM; Sanderson Electronics, Sheffield, Great Britain; Defense Research Agency, Worcs, Great Britain; Ecole Centrale Paris, Chatenay Malabry, France; University of Cape Town, Rondebosch, South Africa; NETLAN Technology Center, New York, NY.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 1, 1989 (54 FR 8608).

The last notification was filed with the Department on August 5, 1992. A notice was published in the Federal Register pursuant to section 6(b) of the

Act on September 22, 1992 (57 FR 43751).

No other changes have been made in either the membership or planned activity of the group research project, as of October 22, 1992. Membership in this group research project remains open, and UNIX intends to file additional written notifications disclosing all changes in membership.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–31799 Filed 12–30–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *Charles V. Hanson, III,* No. 1:90–CV–00708 (E.D. Tex.) has been lodged with the United States District Court for the Eastern District of Texas.

The proposed Consent Decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the alleged unlawful discharge of pollutants into navigable waters and into adjacent wetlands located in or near Keith Lake, Jefferson County, near Port Arthur, Texas, constituting "Waters of the United States." The proposed Consent Decree would also resolve the parties' dispute regarding the Defendant's alleged failure to pay administrative and statutory penalties imposed under the Clean Water Act, 33 U.S.C. 1319(g)(9). The Consent Decree requires Defendant, Charles V. Hanson, III, to pay a $37,500 civil penalty and to remove fill and/or sheet metal riprap, fencing and standing structures from the navigable waters and wetlands affected by the alleged discharge. Under the terms of the Consent Decree, a rock and dirt groin allegedly created by Hanson would be permitted to remain, but the Defendant would be required to mitigate the presence of the groin through the creation of new marsh.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: Joshua M. Levin, P.O. Box 23986, Washington, DC 20026–3986 and should refer to *United States of America* v. *Charles V. Hanson, III,* DJ Reference No. 90–5–1–1–3559.

The Consent Decree may be examined at the Clerk's Office, United States District Court, 320 U.S. Courthouse, 300 Willow Street, Beaumont, Texas 77701.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–31800 Filed 12–30–92; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Arts National Council; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Interdisciplinary Projects Section) to the National Council on the Arts will be held on January 25–26, 1993 from 9 a.m.–6:30 p.m., January 27–28 from 9 a.m.–5:30 p.m., and January 29 from 9 a.m.–4:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 29 from 1:30 p.m.–4:30 p.m. for policy discussion and guidelines review.

The remaining positions of this meeting on January 25–26 from 9 a.m.–6:30 p.m., January 27–28 from 9 a.m.–5:30 p.m., and January 29 from 9 a.m.–1:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 22, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–31788 Filed 12–30–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Council for Continental Scientific Drilling; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Dates and Time: January 28, and 29, 1992; 8:30 a.m. to 6 p.m. each day.

Place: Room 6A092; Department of Energy; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Contact: Dr. James F. Hays, Division Director, Division of Earth Sciences, room 602, National Science Foundation, Washington, DC 20550, (202) 357–7958; and Donald W. Klick, ICG/CSD Executive Secretary, 922 National Center, U.S. Geological Survey, Reston, VA 22092, (703) 648–6346.

Minutes: May be obtained from the Contact Person(s) listed above.

Agenda: Briefings on accomplishments, current activities, and future plans of the DOE, NSF, and USGS CSD programs; discussions of recommendations for organizational structure, procedures, schedule, and related matters for the U.S. CSDP overview by the Council for CSD.

Dated: December 28, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–31767 Filed 12–30–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Date and Time: January 27, 1993, 8:30 a.m. to 5 p.m.

Place: Division of Materials Research, room 410 (DMR Conference Room), National

Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Robert J. Reynik, Head: Office of Special Programs in Materials, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357-9791.

Purpose of Meeting: To provide advice and recommendations concerning support for DMR 1993 REU Site Awards Competition.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 28, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-31768 Filed 12-30-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; NRC Generic Letter 89-10, Safety-Related Motor-Operated Valve Testing and Surveillance; Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The United States Nuclear Regulatory Commission (NRC) has scheduled a public meeting to discuss Generic Letter (GL) 89-10, "Safety-Related Motor-Operated Valve Testing and Surveillance." The purpose of this meeting is to discuss technical and regulatory issues identified during the initial implementation of GL 89-10, insights from the first phase of NRC inspections, and recent valve pressure locking and thermal binding issues. After a brief introduction by the NRC, the NRC will discuss insights gained and generic issues raised during the first phase of GL 89-10 program implementation. In addition, a selection of representatives associated with the Motor-Operated Valve Users Group, Electric Power Research Institute, and Nuclear Management and Resources Council staff may provide a discussion of ongoing industry MOV program activities. Following this, NRC staff will discuss its positions on the implementation of GL 89-10. The NRC discussion will focus primarily on questions received from interested parties, licensees and applicants.

DATE AND LOCATION: The meeting will be held on February 25, 1993, from 8 am to 5 pm at the Ritz-Carlton, 2401 East Camelback Road, Phoenix, Arizona 85016. Telephone (602) 468-0700.

DIRECT QUESTIONS TO: Anthony T. Gody, Jr., United States Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555 Telephone (301) 504-1387.

SUPPLEMENTARY INFORMATION: This meeting is intended to focus on technical and regulatory issues identified during the initial implementation of GL 89-10. The NRC believes that this workshop will be beneficial to both management and technical utility personnel. In order to assist the NRC in preparing for this meeting, interested parties should mail questions to the above address by February 1, 1993. Questions on NRC positions raised during the meeting will be discussed to the extent practical. In addition, the meeting content will be made available to the public following the meeting.

Dated at Rockville, Maryland this 23d day of December 1992.

For the Nuclear Regulatory Commission.

Anthony T. Gody, Jr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-31775 Filed 12-30-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31651; File No. SR-GSCC-92-12]

Self-Regulatory Organizations; Government Securities Clearing Corporation: Order Temporarily Approving a Proposed Rule Change Relating to the Comparison and Netting of Nonmember Trades

December 23, 1992.

On September 17, 1992, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change that will allow GSCC to continue to offer comparison and netting services for nonmember trades which have been submitted to GSCC by netting members on behalf of nonmember executing firms. On December 1, 1992, the Commission published notice of the proposed rule change in the Federal Register to solicit comment from interested persons.[2] No comments were received. The Commission previously approved the proposed rule change on a temporary basis through December 31, 1992.[3] This order approves the proposal through June 30, 1994.

I. Description

The proposed rule change allows GSCC netting members to submit trading activity of nonmembers to GSCC. The proposal effectively expands the scope of trades eligible for GSCC's comparison and netting systems by allowing GSCC to identify, compare, and net trades where one or both sides to the transaction are nonmembers that have entered into clearing or correspondent arrangements with a GSCC member. The proposal, however, will not result in GSCC's interacting directly with nonmembers.[4]

The proposal requires that a member who intends to submit nonmember trading activity to GSCC provide advance notice of its intent to act on behalf of a nonmember.[5] The member will be required to provide separate notices listing the nonmember correspondents whose trading activity the member will introduce for comparison only, and the correspondents whose trading activity the member will introduce into GSCC's system for both comparison and netting. To submit trades to GSCC's netting system, the GSCC member must guarantee performance by the nonmember and must complete delivery, receipt, and payment on netted trades. If the submitting member determines not to guarantee the nonmember's trades, GSCC will not include those trades in the trade netting system.[6]

In order to identify nonmember trades in GSCC's comparison system, the proposal adds two "executing firm" information fields to GSCC's trade data format, allowing the netting member to indicate: (1) The identity of the executing party associated with the submitting member, and (2) the identity of the executing party associated with the counterparty member.[7] Members will continue submitting proprietary trades as usual (i.e., leaving the executing firm fields blank).

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities and Exchange Act Release No. 31493 (November 20, 1992), 57 FR 56938.

[3] Securities Exchange Act Release No. 30078 (December 12, 1991), 56 FR 66110.

[4] See note 7, *infra*.

[5] Specifically, GSCC will require that the member give notice of its intent to act on behalf of a nonmember at least three days prior to the initial submission of trade data on behalf of the nonmember.

[6] See discussion, *infra*, concerning obligations of the submitting member with respect to the netting of nonmember trades.

[7] With regard to this part of the proposal, GSCC has represented to the Division of Market

Unless the executing firm information matches, GSCC will not consider the trade compared. In an effort to avoid an increase in uncompared trades, however, GSCC will consider the trade compared based on the following exceptions: (1) If comparison would yield an uncompared trade because of unmatched executing firm information, and if the trade data agrees in all other respects, the trade will be compared based on a match between the submitting members; (2) if the identity of the executing firm on one side of a trade is not provided, GSCC will compare the trade assuming that there is no executing firm on that side of the trade; (3) if a trade submitted to GSCC does not identify the counterparty submitting member, but the counterparty executing firm information is provided, and the counterparty submitting member has submitted standing instructions[8] designating that member as the submitting member for the identified counterparty executing firm, GSCC will compare the trade assuming that the GSCC member providing the standing instruction is the counterparty submitting member for the trade.

To facilitate comparison of a trade submitted against an affiliate of the true executing firm,[9] GSCC will compare the trade as if it had been submitted against the true executing firm. GSCC will resolve the trade provided the submitting member and the affiliated firms have given GSCC a written authorization to make such a substitution.[10] For example, assume that member *A* submits one side of a trade naming as the counterparty *B* (an affiliate of member *C*) and the trade does not compare as submitted. Assume further that the matching side is submitted by member *C*. GSCC will assume that member *A* intended to name member *C* as the counterparty. GSCC will substitute *C* as the counterparty in the trade data submitted by *A* and compare the trade as if member *A* had originally submitted it against member *C*.

Nonmember trades, like member trades, must be submitted by 10 p.m. in order to be included in GSCC's nightly comparison cycle. GSCC will include the status of nonmember trades in daily comparison reports provided to members.

To assist members is submitting accurate trade data to GSCC, GSCC will maintain a "translation table" which contains identification numbers for counterparticipants and the corresponding identification numbers for GSCC members. Upon the request of a member, GSCC will translate the counterparticipant identifier into a GSCC identification number to assist members in identifying the counterparty to the trade.

If the submitting member has provided notice to GSCC that it wishes to guarantee the trades of the nonmember, trades so submitted and guaranteed will be included in the calculation of the submitting member's clearing fund contribution and other money and securities obligations. The submitting member will be responsible for, among other things, the funds-only and securities settlement portions of its net settlement position attributable to the trades submitted on behalf of the nonmember to the same extent as if the submitting member had executed the trade.[11] In addition, the assessment of the risk posed by the submitting member's trading activity will include trading activity with a nonmember executing firm if that executing firm's trades are netted by GSCC.

Finally, GSCC rules regarding the allocation of loss, the assessment of an additional clearing fund deposit, and placing members on surveillance status will include such trading activity. Of course, if a member chooses not to guarantee a trade submitted on behalf of an executing firm, the trade submitted on behalf of the executing firm will be eligible for GSCC's comparison system but will not be netted or novated by GSCC nor included in the calculation of the submitting member's clearing fund contribution and daily mark requirements.

II. Discussion

The Commission believes that GSCC's proposal promotes the prompt and accurate clearance and settlement of securities transactions consistent with section 17A(b)(3)(A) of the Act.[12] The proposal enhances GSCC's ability to compare and net trades in U.S. government securities. The Commission believes that GSCC's proposal facilitates the purposes of the Act, and in particular, the safeguarding of securities and funds which are under GSCC's control, custody, or for which GSCC is responsible by requiring netting members who guarantee the trades of an executing firm to assume financial responsibility for the trading activity.

In the initial approval order, the Commission stated that GSCC should encourage its members to be more accurate in the data they submit in order to reduce, and eventually eliminate, the need for GSCC to substitute or supplement data on behalf of members. The Commission also stated that GSCC should track the identity of the submitting member and the executing firm in order to identify by type of match each trade involving a nonmember. The Commission stated that the tracking should provide a basis for GSCC to test the accuracy of member input. Finally, the Commission requested that GSCC provide on a quarterly basis during the temporary approval period data concerning GSCC's comparison rates.[13]

GSCC reports that during the third quarter of 1992, the rate of successfully compared trades executed by nonmember firms was 69%.[14] GSCC believes that the relatively low comparison rate is due in part to low participation in the executing firm program, and because matching executing firm information is not submitted by the counterparties of

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Regulation staff that the proposal will not result in GSCC's direct interaction with nonmembers. Comparisons generated by GSCC will not address the nature of the relationship between an executing firm and the firm submitting trades on its behalf.

[8] As discussed above, GSCC will require a comparison or netting member to provide standing instructions that the member is to be deemed the submitting member on all trades involving a designated executing firm. If the member has not provided standing instructions, GSCC will follow its usual reconciliation procedure (i.e., GSCC will advise the member that the trade was not successfully compared.) GSCC will not undertake to determine the identity of the parties to the trade unless the member has provided standing instructions.

[9] The meaning of the term "affiliate" as used in this order and in GSCC's rules is consistent with the definition in Commission Rule 405 and means "a person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified." 17 CFR 230.405 (1985).

[10] Prior to making any such substitution, GSCC must have standing instructions authorizing GSCC to resolve the trade internally.

[11] In this connection, GSCC will no longer require that trades submitted for comparison and netting be trades that are executed "between members." Accordingly, GSCC is revising its rules to reflect that trades may be netted and novated by GSCC as long as those trades are submitted by a GSCC netting member. GSCC Rule 1.

[12] 15 U.S.C. 78q–1(b)(3)(A).

[13] Securities Exchange Act Release No. 30078 (December 12, 1991), 56 FR 66110.

[14] GSCC provided comparison data to the Commission on April 6, 1992, July 9, 1992, and on December 10, 1992. The rate of successfully compared trades submitted by nonmember firms as of April 6, 1992 was 50%. As of July 9, the rate was 59%, and as of December 10, the rate of successfully compared trades was 69%. See letter from Jeffrey F. Ingber, General Counsel, GSCC, to Judith Poppalardo, Assistant Director, Commission (April 6, 1992); letter from Jeffrey F. Ingber, General Counsel, GSCC, to Judith Poppalardo, Assistant Director, Commission (July 9, 1992); and letter from Jeffrey F. Ingber, General Counsel, GSCC, to Sonia Burnett, Attorney, Commission (December 10, 1992).

participants in the program. The executing firm feature was implemented on February 21, 1992. Currently, four GSCC members submit data on trades executed by fifty eight nonmembers.[15] As GSCC continues to add to its membership, GSCC expects to attract more firms that focus their businesses on providing a correspondent clearing service.

The Commission believes that GSCC should be able to deem a trade as compared when both sides of the trade do not agree as to the executing firm information. GSCC structured the proposal in this manner to facilitate the successful comparison of trades because not all GSCC members' internal systems are equipped to accommodate additional information fields.[16] The Commission believes that as participation in the executing firm program grows, the exceptions to the requirements for a matched trade will help bolster the percentage of successfully compared trades.

The Commission believes that GSCC's approach is a reasonable first step in the process of incorporating correspondent activity into a centralized comparison and netting system. The Commission believes, however, that GSCC should gain more experience with the proposal before approving it on a permanent basis. The Commission, therefore, is approving the proposal for eighteen months. During the temporary period, the Commission expects that participation in the executing firm program will continue to increase, and that GSCC will continue to monitor the data submitted by participating firms.

III. Conclusion

For the reasons stated above, the Commission preliminarily finds that GSCC's proposal is consistent with section 17A of the Act.[17]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[18] that GSCC's proposed rule change (File No. SR–GSCC–92–12) be, and hereby is, approved through June 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,
Secretary.

[FR Doc. 92–31827 Filed 12–30–92; 8:45 am]

BILLING CODE 8010–01–M

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[15] The participating firms are: Alex Brown & Sons Inc., BHC Securities, Inc., Bear Stearns Securities Corp., Daiwa Securities America Inc., and Morgan Stanley & Co. Inc. Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Sonia Burnett, Attorney, Commission (December 10, 1992).

[16] All GSCC members, however, will have access through GSCC's daily comparison output report to executing firm information used by GSCC to compare trades, or trade data that was compared under any of the exceptions.

[17] 15 U.S.C. 78q–1(b)(3)(A).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[Release No. 34–31626; File No. SR–OCC–92–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Clearing-Level Spread Margin Treatment for Positions Carried in a Clearing Member's Customers' Account

December 21, 1992.

On May 5, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File No. SR–OCC–92–14) to eliminate the requirement that spreads between long and short positions carried for the same customer be on a contractor-for-contract basis. The Commission published notice of this proposed rule change in the **Federal Register** on September 18, 1992.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change eliminates the requirement of OCC Rule 611 that spreads between long and short positions carried for the same customer be on a contract-for-contract basis. Accordingly, OCC will give clearing-level spread margin treatment to pairs of positions that the customer's margin requirement has been reduced in accordance with applicable exchange margin rules.

The purpose of the proposed rule change is to minimize the possibility that a clearing member will find itself financially "squeezed" between, on the one hand, a requirement in OCC's rules to deposit clearing-level margin to cover a customer's short option position and, on the other hand, the member's inability to collect margin from the customer on the short position because the customer is entitled, under applicable exchange margin rules, to receive spread margin treatment (i.e., to offset the value of a long option position against the margin requirement for the short position).[3] This change will be accomplished by amending OCC Rule 611 which currently states that a clearing member may instruct OCC to release a customer's long position from segregation[4] only if (1) the clearing member is simultaneously carrying for the same customer a short position for "an equal number of option contracts of the same type of options relating to the same underlying security (or, in the case of index options, the same index group)" and (2) the margin on the short position required to be deposited by the customer with the customer's broker has been reduced as a result of the long position.

As revised, OCC Rule 611 will state that a clearing member may instruct OCC to release a customer's long position from segregation if the clearing member is simultaneously carrying for the same customer a short position and the margin on the short position required to be deposited by the customer with the customer's broker has been reduced as a result of the long position. The revision permits OCC to give clearing-level spread margin treatment to any spread consisting of a long position and a short position carried for a customer that receives customer-level spread margin treatment and not just to a customer's spread in which each position is for "an equal number of option contracts of the same type of option relating to the same underlying security (or, in the case of index options, the same index group)."

II. Discussion

The Commission believes that OCC's proposal is consistent with the Act and in particular with Section 17A thereunder.[5] Section 17A(b)(3)(F) of the Act, among other things, provides that the rules of a clearing agency must be designed to "assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible" and to "promote the prompt and accurate clearance and settlement of securities transaction."[6] In addition, section 17A(b)(3)(F) requires that the rules of a clearing agency be designed "to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transaction."[7]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31175 (September 11, 1992), 57 FR 43266.

[3] The clearing member would have had the right to call for additional margin under most margin agreements. However, it would have been contrary to the expectations of both the broker and the customer for the clearing member to do so in view of the availability of spread treatment under applicable exchange rules, and accordingly difficult for the clearing member to do on a regular basis.

[4] A long position is "segregated" for purposes of OCC's rules if it is not subject to OCC's lien. Conversely, a long position is "unsegregated" if it is subject to OCC's lien. Unsegregated long positions are available, to the extent specified in OCC's rules, to reduce OCC's margin requirement with respect to short positions in the same account.

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

Since its inception, the purpose of OCC Rule 611 has been to limit the use of clearing-level spread margin treatment to customer spreads for which the customer's broker provides spread margin treatment at the customer-level. The need for OCC Rule 611 arose in 1975 when The Chicago Board Options Exchange ("CBOE"), American Stock Exchange ("AMEX"), and the New York Stock Exchange ("NYSE") adopted new customer margin rules. These rules provided, in effect, that where an option is carried in a short position in a customer's account and the account is also long an option on the same underlying security[8] that expires at the same time or after the short position expires, the customer's margin requirement need not exceed the amount, if any, by which the exercise price of the long option exceeds the exercise price of the short option.[9]

Before enactment of OCC Rule 611, OCC's margin rules prohibited clearing members from offsetting any portion of the value of the long positions in a customers' account against the margin required for short positions in that account. As a result, a clearing member that had customers with hedged long and short positions found itself "squeezed" between a requirement to deposit clearing-level margin to cover a customer's short positions and its inability, as a practical matter, to collect margin from the customer under applicable exchange rules. OCC Rule 611 was adopted, therefore, to permit OCC to provide clearing-level spread margin treatment to the hedged short and long positions of a customer, but only if the customer were subject to a reduced margin requirement for the short position as a result of the long position.[10]

While adequate clearing margin is necessary for the integrity of the clearance and settlement system, excess margin requirements impose an unnecessary financial burden on market participants, reduce liquidity in the marketplace and impede the safe and efficient clearance and settlement of securities transactions. The proposed revision to OCC Rule 611 appropriately balances the need to assess margin on OCC's clearing members against the risk that excessive margin will reduce market liquidity. Thus, the Commission believes that the proposal is consistent with the Act's requirements that the rules of a clearing agency be designed to safeguard securities and funds in the clearing agency's custody or control or for which it is responsible and to facilitate the prompt and accurate clearance and settlement of securities transactions.

The most immediate effect of the proposed rule change will be with respect to pairs of positions where one position consists of standard-sized index options and the other consists of "reduced-value" index options.[11] Each reduce-value option has a value equal to one-tenth of the value of a standard-sized index option.[12] Because ten reduced-value index option contracts equal one standard-sized index option contract in value, in terms of the risk these pairs create for OCC, OCC should be able to give a clearing member spread margin treatment where ten reduced-value index options are paired against a single standard-sized option contract. OCC Rule 611 currently requires that the long position and short position consist of an "equal number of option contracts" and thus prohibits OCC from giving clearing-level spread margin to such pairs. If a broker were to give spread margin treatment to a customer carrying such a pair of positions pursuant to exchange rules, the clearing member could find itself squeezed between its inability to collect customer-level margin and its obligation to deposit clearing-level margin.[13]

As amended, Rule 611 will minimize[14] the risk of a "squeeze" on the finances of clearing members when an exchange introduces a new product that entitles customers to customer-level spread margin treatment under exchange rules but does not entitle clearing members to clearing-level spread margin treatment under OCC rules. Therefore, the Commission believes that the proposal is consistent with section 17A of the Act in that it promotes prompt and accurate clearance and settlement by removing impediments to and perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with section 17A thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–92–14) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

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[7] *Id.*

[8] In the case of an index option, the long must be on the same underlying index.

[9] See, e.g., CBOE Rules 12.3(b)(1)(C)(1) and 24.11(c)(1) (parallel provision for index options).

Thus, if a customer were long an option on XYZ Corporation with an exercise price of $105 and short an option on XYZ with an exercise price of $100, the spread would be $5 and the amount of margin the customer would owe to its broker would not need to exceed $5. Based on this spread, TIMS would nearly always assess a $5 margin against the clearing member. Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Richard C. Strasser, Attorney, Division, Commission (December 17, 1992).

[10] The staff of the Commission expressed its view that provision by OCC of clearing-level spread margin treatment of customer positions was consistent with Exchange Act Rules 15c3–3, 15c2–1, and 8c-1, so long as such treatment was limited in this manner. Letter from Lee A. Pickard, Director, Division of Market Regulation, Commission, to Burton R. Rissman, Schiff Hardin & Waite (April 18, 1975).

[11] Under OCC's rules, a reduced-value index option is an index option for which the exchange on which the option is traded has specified a fraction that is to be multiplied times the value of the underlying index in determining "current index values." See OCC By-Law, Article XVII, Section 1(f) ("current index value" means the level of a particular index at the close of trading or another time of day specified by the Exchange, "or any multiple or fraction thereof specified by [the] Exchange"). Such pairs are already listed by CBOE, AMEX, and the Philadelphia Stock Exchange, and are approved to be listed by the NYSE.

[12] All the exchanges have specified that their respective reduced-value index options are to have current index values equal to one-tenth of the value of their respective underlying indexes. Index multipliers are to be equal in value to the index multipliers of their counterpart respective standard-sized index options. Therefore, each "aggregate current value" of a reduced-value index option (i.e., the product of the current index value and the index multiplier) is one-tenth the aggregate current index value of its counterpart standard-sized index option for the same day.

[13] OCC recently changed Rule 611 (File No. SR–OCC–91–14) to accommodate capped index options, a new product recently approved for trading on the CBOE and AMEX. Securities Exchange Act Release No. 29876 (October 28, 1991), 56 FR 56435. Without that change to Rule 611, short positions in capped index options, when paired against long positions in American-style and European-style index options, would not have been entitled to clearing-level spread margin treatment even though such pairs could be entitled to customer-level spread margin treatment under applicable exchange rules. File No. SR–OCC–91–14 amended Rule 611 only to the extent necessary to accommodate capped index options. The present proposed rule change amends Rule 611 on a more general basis.

[14] The proposal minimizes the potential for a financial squeeze on clearing members, but does not eliminate it because OCC will continue to use its own margin system to determine whether, and to what extent, particular spreads may be given spread margin treatment consistent with preserving the level of safety OCC requires. Therefore, it will remain possible, at least theoretically, that an OCC clearing-level margin requirement for a spread will be greater than the requirement imposed on a customer by the customer's broker.

[15] 17 CFR 200.30–3(a)(12) (1992).

Jonathan G. Katz,
Secretary.

[FR Doc. 92-31828 Filed 12-30-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-19177; 812-7855]

The ASO Outlook Group, et al.; Application

December 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The ASO Outlook Group, AmSouth Bank N.A., The Parkstone Group of Funds, First of America, BB&T Mutual Funds Group, Branch Banking and Trust Company, Conestoga Family of Funds, Meridian Investment Company, American Performance Funds, BancOklahoma Trust Company, AMR Investment Services, Inc., and The Winsbury Company.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order of exemption to permit the named investment company applicants, and any other registered investment company for which The Winsbury Company ("Winsbury") (or any person directly or indirectly controlling, controlled by, or under common control with Winsbury) may serve in the future as principal underwriter (the "Funds"), to establish multiple classes of shares in their respective investment portfolios.

FILING DATES: The application was filed on January 22, 1992, and amended and restated applications were filed on July 30 and November 9, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 15, 1993, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Winsbury, 1900 East Dublin-Granville Road, Columbus, Ohio 43229.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The ASO Outlook Group (the "Trust"), the Parkstone Group of Funds, BB&T Mutual Funds Group, Conestoga Family of Funds, and American Performance Funds are each Massachusetts business trusts registered as diversified, open-end management investment companies. AmSouth Bank ("AmSouth") is a national bank that serves as investment adviser to the Trust. First of America is a registered investment adviser that serves as investment adviser to The Parkstone Group of Funds. Branch Banking and Trust Company is a North Carolina bank that serves as investment adviser to BB&T Mutual Funds Group. Meridian Investment Company is a registered investment adviser that serves as investment adviser to Conestoga Family of Funds. BancOklahoma Trust Company, an Oklahoma trust company, and AMR Investment Services, Inc. are both registered investment advisers that serve as investment advisers to American Performance Funds.

2. The Trust, designated as the "Lead Applicant" in the application, currently offers shares representing interests in eight investment portfolios (the "Portfolios"), each of which has separate investment objectives and policies. Winsbury serves as principal underwriter of the Trust's shares and also acts as the Trust's administrator. The Winsbury Service Corporation, an affiliate of Winsbury, serves as the Trust's transfer agent, and Citibank, N.A. is the Trust's custodian.

3. The majority of the Trust's shares currently are held through fiduciary, agency, custodial and similar accounts established with the Trust Division of AmSouth or one of its affiliates. The Trust also offers its shares through broker-dealers. Sales of the shares of certain Portfolios are subject to a front-end sales charge of up to 4.5% of the public offering price of such shares. The Trust currently does not impose a rule 12b-1 fee with respect to any Portfolio.

4. The Trust proposes to offer up to four separate classes of shares in its Portfolios. Class A shares will be offered to individual investors through broker-dealers or directly by Winsbury. Class B shares will be offered to qualified accounts through correspondent banks of AmSouth, financial institutions, and other organizations. Class C shares will be offered through the Trust Division of AmSouth and through its affiliates for funds that are held in a fiduciary, agency, custodial or similar capacity. Class C shares may also be purchased by certain other limited categories of investors, including employees of AmSouth and Winsbury, respectively, trustees of the Trust, and participants in payroll deduction plans, 401(k) plans or 403(b) plans invested in the Trust. Class D shareholders will consist solely of those investors who, as of the day immediately preceding the date on which a Portfolio implements the multiple class structure, own shares in the Portfolios but who are not eligible (due, for example, to the absence of a fiduciary account relationship with AmSouth) to purchase Class C shares.

5. The Trust will offer Class A and Class B shares in connection with plans adopted pursuant to rule 12b-1 under the 1940 Act. Class A and Class B rule 12b-1 plans will provide for the payment of a distribution fee to Winsbury not to exceed an annual rate of .40% and .25%, respectively, of the average daily net assets attributable to a Portfolio's Class A or Class B shares. Winsbury may reallocate part or all of the fee as compensation to broker-dealers (in the case of Class A) or to correspondent banks of AmSouth, financial institutions, and other organizations (in the case of Class B). Class C and Class D shareholders will not adopt a rule 12b-1 plan or pay any rule 12b-1 fee.

6. Under the rule 12b-1 plans, Winsbury will enter into shareholder services and/or distribution agreements ("Service Agreements") with broker-dealers (in the case of Class A), and with correspondent banks of AmSouth, financial institutions, and other organizations (in the case of Class B) to provide distribution assistance in connection with the distribution of the applicable class to their customers on whose behalf the investment is made, and/or to provide shareholder services to their customers owning Class A or Class B shares. The provision of support services and distribution assistance under the Service Agreements will augment, and not duplicate, the services that will otherwise be provided to the Trust by Winsbury, AmSouth, the Trust's transfer agent and its custodian.

7. By creating and offering shares in connection with rule 12b–1 plans as described above, and by also offering shares independently of the rule 12b–1 plans, Applicants believe that the Trust will be able to achieve added flexibility in meeting the service and investment needs of its existing and future shareholders while appropriately causing the associated expenses to be borne by such investors. Applicants believe that it would be inefficient, and probably economically or operationally unfeasible, to organize a separate investment portfolio for each class of shares. Not only would the Trust incur unnecessary accounting and bookkeeping costs in organizing and operating such new portfolios, but the Trust's management of the new portfolios, as well as its existing Portfolios might be hampered.

8. In order to avoid such risks, Applicants intend to use a structure under which multiple classes of shares could be created without having to establish corresponding separate portfolios. Under the proposed arrangement, each share in a particular Portfolio, regardless of class, would have identical voting, dividend, liquidation and other rights and limitations, except for: (a) class designation; (b) the amount and type of fees permitted by different distribution plans adopted pursuant to rule 12b–1 under the 1940 Act; (c) the impact of any Class Expenses, as that term is defined below; (d) voting rights with respect to rule 12b–1 plans; and (e) different exchange privileges.

9. Operating expenses for the different classes may vary depending on the type of investor being offered each class. For example, it is more likely that Class A and Class D shareholders will desire services, such as redemption by check and/or debit cards, that substantially increase transfer agent fees and that may not be required in connection with institutional or trust investors. On the other hand, the relatively fewer shareholders of record in Class B, Class C, and Class D will require substantially lower expenditures in terms of printing, postage and proxy solicitation relative to the net assets of each such Class. Therefore, in addition to the fees under the rule 12b–1 plans applicable to Class A and Class B shares, it is proposed that expenses specifically attributable to a particular class ("Class Expenses") would be borne by that class.

10. Class Expenses will be limited to: (a) Transfer agent fees as identified by the Trust's transfer agent as being attributable to a specific class; (b) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to shareholders; (c) Blue Sky registration fees; (d) SEC registration fees incurred by a class of shares; (e) the expense of administrative personnel and services as required to support the shareholders of a specific class; (f) litigation or other legal expenses relating solely to one class of shares; and (g) trustees' fees incurred as a result of issues relating to one class of shares. Expenses that are not attributable to a specific class will be allocated *pro rata* to each class based on the relative net asset value of each such class. Expenses incurred by the Trust that would not be attributable to a particular Portfolio or a particular class thereof could include, for example, fees of trustees, auditors, and legal counsel. Expenses incurred by the Portfolio that would not be attributable to any particular class of the Portfolio's shares could include, for example, advisory fees.

11. Because of the expenses incurred under a 12b–1 plan and the level of any Class Expenses that would be borne by a class of shares, the net income of (and dividends payable to) each class within a Portfolio may be different. Dividends paid to each class of shares in a Portfolio would, however, be declared and paid on the same days and at the same times, and, except as noted above with respect to the expense of the rule 12b–1 plans and any Class Expenses, would be determined in the same manner and paid in the same amounts. In addition, except for those Portfolios that seek to maintain a stable net asset value per share, the net asset value attributable to each class of a Portfolio's shares may diverge over time due to the payment of fees (if any) pursuant to a rule 12b–1 plan and the allocation of any Class Expenses.

12. Each Portfolio of the Trust or each series of a Fund may or may not offer all four of the classes of shares described in the application and summarized herein. For example, a Portfolio or Fund with no prior "retail" shareholders would have no need for and would not offer Class D shares. In addition, the maximum annual rates allowable under each rule 12b–1 plan for a particular class may differ based upon the independent determination of the governing board of trustees in accordance with rule 12b–1. Furthermore, each Portfolio of the Trust may offer more than four classes in the future, provided any such additional class is structured in the same manner as the classes described in the application and summarized herein. The expenses that any such class will bear will be limited to those expenses listed in Condition 1 below. Also, each class of shares of one Portfolio may be exchanged only for shares of the same class in another Portfolio.

13. All representations in the application and the conditions imposed by any order will apply not only to the Trust but also any other Fund.

Applicants' Legal Analysis

1. Applicants request an exemptive order under section 6(c) of the 1940 Act to the extent that the proposed issuance and sale of shares representing interests in the same investment portfolio might be deemed: (1) To result in a "senior security" within the meaning of section 18(g) of the 1940 Act and to be prohibited by section 18(f)(1) of the 1940 Act; or (2) to violate the equal voting provisions of section 18(i) of the 1940 Act.

2. Applicants assert that the proposed allocation of expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. Investors purchasing shares offered in connection with a rule 12b–1 plan would bear the costs associated with services rendered pursuant to the 12b–1 plan and would possess exclusive shareholder voting rights with respect to matters affecting such 12b–1 plan, while investors purchasing shares that are not covered by such 12b–1 plan would not bear such expenses or possess such voting rights.

3. Applicants state that the proposed arrangement does not involve borrowing and will not affect a Fund's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a series since all shares will participate in all of the series' income and expenses (except for the 12b-1 fees and Class Expenses assessed to a particular class). Applicants submit that the requested exemption is appropriate, in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions.[1]

1. The classes each will represent interests in the same portfolio of investments of a Fund and be identical

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[1] Condition 6 in the application, relating to shareholder approval of rule 12b-1 plans, is no longer required as one of the standard conditions for multi-class exemptive orders. Accordingly, any order issued on this application will not be made subject to Condition 6, and the Conditions set forth in the notice have been renumbered to reflect the deletion of Condition 6.

in all respects except for certain differences related to: (a) The method of financing certain Class Expenses, which are limited to: (i) transfer agent fees as identified by the Fund's transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) trustees/directors' fees incurred as a result of issues relating to one class of shares; (b) expenses assessed to a class pursuant to a rule 12b-1 plan; (c) the related voting rights as to matters exclusively affecting one class of shares; (d) exchange privileges; and (e) class designation differences. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The board of trustee/directors of a Fund, including a majority of the independent trustees or directors, will approve the offering of different classes of shares of the Fund (the "Multi-Class System") prior to the implementation of the Multi-Class System. The minutes of the meetings of the board of trustees/directors of a Fund regarding the deliberations of the trustees or directors with respect to the approvals necessary to implement the multi-Class System will reflect in detail the reasons for the trustees' or directors' determination that the proposed Multi-Class System is in the best interests of both the Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees/directors of a Fund including a majority of the trustees/directors who are not interested persons of such Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the board of trustees/directors, and the trustees/directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees or directors of a Fund, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the various classes of shares. The trustees or directors, including a majority of the independent trustees or directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Fund's adviser and distributor will be responsible for reporting any potential or existing conflicts to the trustees or directors. If a conflict arises, the adviser and the distributor, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. The distributor of a Fund will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

6. In evaluating a Service Agreement, the trustees/directors will specifically consider whether (a) the Service Agreement is in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the Service Agreement are required for the operation of the applicable classes, (c) the service organizations can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

7. Each Service Agreement entered into pursuant to a rule 12b-1 plan will contain a representation by the broker-dealer, financial institution, or organization that any compensation payable to the entity in connection with the investment of its customers' assets in a Fund: (a) Will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the entity.

8. Each Service Agreement entered into pursuant to a rule 12b-1 plan will provide that, in the event an issue pertaining to the 12b-1 plan is submitted for shareholder approval, the broker-shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

9. The board of trustees/directors of a Fund will receive quarterly and annual statements concerning rule 12b-1 plan expenditures complying with paragraphs (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the board of trustees/directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees/directors in the exercise of their fiduciary duties.

10. Dividends paid by a Fund with respect to a class of shares in a series, to the extent that dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by a Fund with respect to each class of shares in the same series, except that Class Expenses and payments made pursuant to a rule 12b–1 plan will be allocated exclusively to that class.

11. The methodology and procedures for calculating the net asset value and dividend/distributions of the various classes and the proper allocation of expenses among the classes will be reviewed by an expert (the "Expert") who has rendered a report to Applicants, which has been provided to the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an on-going basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Expert with respect to such reports, following request by a Fund (which each Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to a Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Regional Administrators. The initial report of the Expert will be a "Special Purpose" report on the "Design of a System" and ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from

time to time, or in similar auditing standards as may be adopted by the AICPA from time to time,

12. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the various classes of shares and the proper allocation of expenses among the classes of shares. This representation will be concurred with by the Expert in the initial report referred to in Condition 11 above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the on-going reports referred to in that condition. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the on-going reports.

13. The prospectus of each class of a Fund will contain a statement to the effect that any person entitled to receive compensation for selling Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

14. The conditions pursuant to which an exemptive order requested by the application may be granted and the duties and responsibilities of the board of trustees/directors of a Fund with respect to the Multi-Class System described in the application will be set forth in guidelines which will be furnished to the board of trustees/directors of the Fund.

15. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by Applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares separately.

16. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that a Fund may make pursuant to a rule 12b–1 plan in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–31829 Filed 12–30–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19174; 812–8080]

Pacific Global Fund, Inc., et al.; Notice of Application

December 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Pacific Global Fund, Inc., d/b/a Pacific Advisors Fund, Inc. ("Pacific Global"), on behalf of each of its series (the "Funds"), Pacific Global Investment Management Company ("Pacific Management"), and Pacific Global Fund Distributors, Inc. ("Pacific Distributors"), and any other existing or future registered investment companies, or existing or future series thereof, which may become a member of Pacific Global's "group of investment companies" as defined in rule 11a–3, and whose shares may be distributed on substantially the same basis as those of each of the Funds.[1]

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) for exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and to waive the CDSC under certain circumstances.

FILING DATE: The Application was filed on September 4, 1992, and amended on December 4, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 19, 1993, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 215 North Marengo Avenue, Suite 115, Pasadena, CA 91101.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representation

1. Pacific Global is an open-end management investment company organized under the laws of the State of Maryland.[2] Pacific Management, a California corporation, will serve as the investment adviser of each of the Funds. Pacific Distributors, a California corporation, will serve as exclusive distributor for the Funds.

2. All shares of the Funds will be offered daily to the public at their net asset value plus a front-end sales load calculated as a percentage of the offering price at the time of purchase. The sales load is reduced as the aggregate dollar amount invested increases. The front-end sales load is waived in the case of the following net asset value purchases ("Net Asset Value Purchases"): (a) Shares bought through the reinvestment of dividends and capital gains distributions; (b) purchases by directors, officers, or bona fide employees of Pacific Global, Pacific Management, Pacific Distributors, Pacific Global's transfer agent, and by members of their immediate families; (c) purchase by clients of Pacific Management; (d) purchases by registered investment advisers for their counsel accounts; (e) purchases by registered representatives and other employees of any dealer or broker that has entered into a selling group agreement with Pacific Distributors; and (f) accounts opened for shareholders by dealers where the amounts invested represented the

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[1] Applicants represent that certain existing funds and existing series which do not currently intend to rely on any relief granted to applicants are not named as parties to the application, but may in the future rely on any exemption granted pursuant to the application so long as they determine to impose a CDSC in accordance with the representations and condition in the application.

[2] Pacific Global filed its registration statement on Form N–1A under the Securities Act of 1933 and the Act on July 29, 1992. It intends to offer four series of shares relating to four Funds.

redemption proceeds from investment companies distributed by an entity other than Pacific Distributors, if such redemption has occurred no more than 15 days prior to the purchase of shares of the Fund and the shareholder paid an initial sales charge. With respect to categories (a) through (e) above, however, the front-end sales load is waived only when: (i) any purchase order for shares of a Fund originates with the member of the class thus qualified, (ii) no sales effort is required in connection with such purchase, (iii) the purchaser satisfactorily establishes his or her employment or immediate relationship upon request, and (iv) the purchaser undertakes that any such purchase is for investment purposes only and the securities purchased will not be resold except to the Fund.

3. Pacific Global intends to adopt a rule 12b-1 plan pursuant to which each of the Funds will pay distribution fees to Pacific Distributors of up to 0.25% per annum of the Fund's average daily net assets.

4. Applicants propose to eliminate, where applicable, the front-end sales load on all purchases of Pacific Global's shares of $1 million or more, and impose a CDSC on redemptions of such shares if they are redeemed within a period of up to 18 months after the end of the calendar month in which the purchase order was accepted. Redemption of such shares held longer than the 18 month period would not be subject to the CDSC. The amount of the CDSC to be imposed at any time during such period will be equal to 1% of the lesser of (i) the original cost of the redeemed shares, or (ii) the net asset value of the redeemed shares at the time of redemption (the "CDSC value"). Shares issued prior to an order being granted permitting applicants to impose a CDSC will not be subject to such CDSC.

5. No CDSC will be imposed on an amount which represents capital appreciation of shares, reinvestment of dividends, or capital gains distribution. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares not subject to the CDSC, including shares derived from reinvestment of dividends or capital gains distributions, and then other shares in the order of purchase.

6. No CDSC will be imposed on exchanges of shares of a Fund subject to a CDSC for shares of another Fund or for shares of other mutual funds available pursuant to Pacific Global's share exchange program ("Eligible Funds"); provided, however, that if the shares acquired by such exchanges are redeemed within 18 months of the end of the calendar month of the initial purchase of the exchanged shares, the CDSC will apply to the acquired shares being redeemed. A CDSC will be imposed, however, on Fund shares acquired in exchange for shares of a money market Eligible Fund sold without a sales load, unless such shares were initially acquired in an exchange from a Fund for which a sales charge applied, or as a result of reinvestment of dividends or capital gain distributions. Applicants reserve the right to change or discontinue the exchange privilege in the future, and will comply at all times with the requirements of rule 11a-3.

7. Under the proposed arrangement, the CDSC will be waived in the case of redemptions of shares of: (a) Net Asset Value Purchases; (b) retirement distributions (or loans) to participants or beneficiaries from retirement plans qualified under sections 401(a) or 403(b)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), or from IRAs, deferred compensation plans created under section 457 of the Code, or other employee benefit plans; (c) returns of excess contributions to such retirement or employee benefit plans; (d) payments made in connection with Pacific Global's automatic withdrawal plan, but limited to no more than 12% of the original account value annually; and (e) involuntary redemptions of shares by operation of law or under procedures set forth in Pacific Global's articles of incorporation or as adopted by its board of directors.

8. Shares on which a CDSC was paid at the time of redemption and which are subsequently invested under Pacific Global's reinvestment privilege will be credited with payment of the CDSC by Pacific Distributors on such reinvestment if identified by the shareholder at the time of reinvestment. The reinvestment privilege provides that the shareholder account will be credited if: (a) the reinvestment is effected within 60 days following the redemption; (b) the amount reinvested does not exceed the amount redeemed; (c) the shareholder has not utilized the privilege in the current calendar year; and (d) the shareholder, upon request, notifies the transfer agent for the applicable Fund that the shareholder is entitled to reinvest the redemption proceeds.

9. Any changes to the period or the amount of the CDSC to be imposed on a Fund's shares will be disclosed in Pacific Global's prospectus. Any such changes will not affect shares of that Fund issued prior to such disclosure. In addition, any waiver of a CDSC will be uniformly applied to all shares in the specified category. If the board of directors, on behalf of a Fund that has been waiving its CDSC, determines not to waive such CDSC any longer, the disclosure in the prospectus of the affected Fund will be appropriately revised and such revocation of waiver will be applied only to shares purchased after the date of such revision.

Applicants' Condition

If the requested order is granted, Applicants expressly agree to the following condition: Applicants will comply with proposed rule 6c-10 under the Act, as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-31830 Filed 12-30-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-19176; 812-8036]

Shearson Lehman Brothers Appreciation Fund Inc., et al.; Notice of Application

December 22, 1992.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Shearson Lehman Brothers Appreciation Fund Inc., Shearson Lehman Brothers Fundamental Value Fund Inc., Shearson Lehman Brothers Aggressive Growth Fund Inc., Shearson Lehman Brothers Small Capitalization Fund, Shearson Lehman Brothers Telecommunications Trust (Telecommunications Growth Fund), Shearson Lehman Brothers Global Opportunities Fund, Shearson Lehman Brothers Precious Metals and Minerals Fund Inc., Shearson Lehman Brothers Managed Governments Fund Inc., Shearson Lehman Brothers Managed Municipals Fund Inc., Shearson Lehman Brothers Short-Term World Income Fund, Shearson Lehman Brothers 1990s Fund, the Advisors Fund L.P., Shearson Lehman Brothers Arizona Municipals Fund Inc., Shearson Lehman Brothers California Municipals Fund Inc., Shearson Lehman Brothers Florida Municipals Fund, Shearson Lehman Brothers Massachusetts Municipals Fund, Shearson Lehman Brothers New Jersey Municipals Fund Inc., Shearson Lehman Brothers New York Municipals Fund Inc., Shearson Lehman Brothers Worldwide Prime

Assets Fund, Shearson Lehman Brothers Income Trust, Shearson Lehman Brothers Adjustable Rate Government Income Fund, SLH Investment Portfolios Inc., Shearson Lehman Brothers Income Funds, and Shearson Lehman Brothers Equity Funds (collectively referred to as the "Funds"); Shearson Lehman Brothers Inc. (the "Distributor"); and Shearson Lehman Investment Strategy Adivsors Inc., Lehman Brothers Global Asset Management Limited, PanAgora Asset Management Limited, The Boston Company Advisors, Inc., Salomon Brothers Asset Management Inc. and BlackRock Financial Management L.P. (each, an "Advisor" and collectively, the "Advisors").

RELEVANT 1940 ACT SECTIONS: Conditional order requested under section 6(c) of the 1940 Act for exemptions from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the 1940 Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order of exemption that permitted the establishment of a multiple class and contingent deferred sales charge ("CDSC") arrangement with three share classes (the "Prior Order"). The requested amended order would permit (i) the imposition of a CDSC on certain redemptions of Fund shares sold pursuant to a front-end sales load waiver, (ii) the sale of a fourth class of securities without a front-end sales load or CDSC but subject to service and distribution fees, (iii) the issuance of additional classes of shares with different sales load and service and distribution fee structures in the future, and (iv) the imposition of certain additional class related expenses on the respective classes. Applicants also seek to amend another prior order (the "Income Trust Order") obtained by Shearson Lehman Brothers Income Trust ("Income Trust") to permit Income Trust to expand the circumstances under which it may waive its existing CDSC.

FILING DATES: The application was filed on August 7, 1992 and amended and restated applications were filed on September 25 and October 23, 1992. Counsel, on behalf of Applicants, has agreed to file a third amended and restated application during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on January 15, 1993, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; the Funds and Shearson Lehman Investment Strategy Advisors Inc., Two World Trade Center, New York, New York 10048; the Distributor, American Express Tower, World Financial Center, New York, New York 10285; Shearson Lehman Global Asset Management Limited, Two Broadgate, London EC2M 7HA, England; PanAgora Asset Management Limited, 3 Finsbury Avenue, London EC2M 2PA, England; The Boston Company Advisors, Inc., One Boston Place, Boston, Massachusetts 02108; Salomon Brothers Asset Management Inc., Seven World Trade Center, New York, New York 10048; BlackRock Financial Management L.P., 345 Park Avenue, New York, New York 10154.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the 1940 Act. Several of the Funds consist of multiple investment portfolios or series, and, as used herein, the term "Fund" refers to each such portfolio or series. Each Fund has entered into or will enter into an investment advisory agreement with an Advisor pursuant to which the Advisor, subject to the general supervision of the Board of Directors or Board of Trustees or individual general partners of the Fund (the "Governing Board"), provides investment advisory and management services. Each Fund has entered into or will enter into a distribution agreement with the Distributor, a registered broker-dealer and investment adviser that is a wholly-owned subsidiary of American Express Company, pursuant to which the Distributor acts as principal underwriter for the Fund. In addition to serving as investment adviser to certain Funds, The Boston Company Advisors, Inc. (the "Administrator") serves as either sub-investment adviser and administrator or as administrator to each of the Funds.

2. The Prior Order permits Applicants to create a multiple class distribution system (the "Variable Pricing System") for different classes of shares within each Fund and, in connection therewith, to impose a CDSC arrangement. Investment Company Act Release No. 18832 (July 7, 1992). Under the Variable Pricing System, as implemented on November 6, 1992, each of the Funds offers investors the option of purchasing shares with either a front-end sales load together with a plan of distribution adopted pursuant to rule 12b–1 under the 1940 Act providing for a service fee ("Class A shares") or subject to a CDSC and a rule 12b–1 plan providing for a service fee and a distribution fee ("Class B shares"). The Class B shares have a conversion feature providing for their automatic conversion to Class A shares approximately eight years after purchase. In addition, certain Funds offer a third class of shares ("Class C shares") for purchase by certain unit investment trusts for which the Distributor and its affiliates serve as sponsor and by other restricted categories of investors that entail limited distribution costs. Class C shares are offered without imposition of either a sales charge or a distribution or service fee.

3. As described more fully below, Applications seek the requested exemptive relief to amend the Variable Pricing System (the "Amended Variable Pricing System") to permit (i) the imposition of a CDSC on certain redemptions of Class A shares, (ii) the establishment of a fourth class of shares, (iii) the establishment of additional classes of shares in the future, and (iv) the imposition of certain additional class related expenses on the respective classes. The application for the Prior Order contains a detailed discussion, in the context of the Variable Pricing System, of various matters relating to the structure and operations of the Amended Variable Pricing System that are incorporated by reference in the present application. Applicants request the relief for themselves and for any other open-end management investment company that is in the same "group of investment companies" with the Funds, as defined in rule 11a–3 under the 1940

Act. It is presently contemplated, however, that the Amended Variable Pricing System will be implemented only with respect to the Funds named in the application.

4. Applicants request an amendment to the Prior Order to exempt Applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and rule 22c–1 thereunder to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of Class A shares sold pursuant to a complete waiver of front-end sales loads applicable to large purchases, if the shares are redeemed within one year of the date of purchase. The Class A shares subject to the CDSC would be limited to those sold at net asset value pursuant to the sales charge waiver for large purchases. The waiver is expected to apply to sales of Class A shares where the amount of purchase is equal to or exceeds $1,000,000, although this amount may be changed in the future. The CDSC would be imposed only on Class A shares issued on or after the date any amended order is granted, only after disclosure in the then current prospectuses of the Funds, and only in the event of a redemption transaction occurring within one year following the date of purchase. The CDSC applicable to these Class A shares would be calculated in the same manner as the CDSC with respect to the Class B shares described in the Prior Order. The amount of the CDSC, however, will be limited to 0.75% of the net asset value of the shares redeemed. Any changes in the CDSC amount or the period over which the CDSC applies will be reflected in the prospectus of the affected Fund, and the change will not adversely affect shares that were issued prior to the date of the change. The CDSC on Class A shares may be waived in the same situations as it is waived with respect to Class B shares, as described in the Prior Order.

5. Shares of Income Trust currently are sold subject to a maximum front-end sales charge of 1.25%, a rule 12b–1 plan providing for a service fee, and, pursuant to the Income Trust Order, subject to a CDSC of 1.00% of the amount redeemed (if redeemed within one year of purchase). *See* Investment Company Act Release No. 18623 (Mar. 23, 1992). Applicants contemplate that, in connection with the implementation of the Amended Variable Pricing System, the front-end sales charge would be waived on purchases of Income Trust shares of $1,000,000 or more and the CDSC would be reduced to 0.75% of the amount redeemed.

6. Applicants also propose to establish a fourth class of shares to be known as Class D shares. Class D shares would be offered without either a front-end load or a CDSC but would be subject to a service fee of up to 0.25%, and a distribution fee of up to 0.75%, of average daily net assets pursuant to a rule 12b–1 plan. Class D shares would not be subject to a conversion feature; accordingly, these shares would continue to be subject to a distribution fee for an indefinite period of time. The Funds reserve the right to impose these fees at such higher rate as may be determined. However, the Funds will not impose service and distribution fees in excess of amounts permitted by the recently approved rule change to Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc., as the rule may from time to time be amended. It is contemplated that Class D shares of a Fund will be exchangeable only for Class D shares of other Funds and for shares of money market funds sponsored by the Distributor that do not have a sales load.

7. Applicants also seek authority to create, from time to time, additional classes of shares ("Additional Classes") that may differ from Class A, Class B, Class C, and Class D shares only in the following respects: (a) each class of shares would have a different designation; (b) each class of shares might be sold under different sales arrangements (*e.g.*, sales with a front-end sales load, subject to a CDSC, subject to a combination of a front-end sales load and a CDSC, or at net asset value); (c) each class of shares would bear any rule 12b–1 plan payments related to that class (and any other costs relating to obtaining shareholder approval of the rule 12b–1 plan for that class or an amendment to its rule 12b–1 plan); (d) each class of shares would bear expenses that are directly attributable only to the class, limited to the expenses identified in the following paragraph; (e) only shareholders of the affected classes would be entitled to vote on matters pertaining to the rule 12b–1 plan relating to their respective class of shares; and (f) each class of shares would have different exchange privileges.

8. Applicants also propose that Class A, Class B, Class C, and Class D, as well as the Additional Classes, be permitted to bear certain expenses (the "Class Expenses") that are directly attributable only to the class. Each class of shares would bear Class Expense limited to: (i) transfer agency fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; (vii) fees of members of the Governing Boards incurred as a result of issues relating to one class of shares; and (viii) other expenses that are subsequently identified and determined to be properly allocated to one class of shares that shall be approved by the Commission pursuant to a further amended order.

9. Under the Amended Variable Pricing System, all expenses incurred by a Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class, except that each class' net asset value and expenses will reflect the expenses associated with that class' rule 12b–1 plan (if any), including any costs associated with obtaining shareholder approval of the rule 12b–1 plan (or an amendment to the rule 12b–1 plan) and any Class Expenses. Because of the higher distribution fees paid by the holders of certain classes (*e.g.*, Class B and Class D), the net income attributable to and the dividends payable on each class with higher distribution fees would be lower than the net income attributable to and the dividends payable on each class with lower distribution fees (*e.g.*, Class A) or with no distribution fees at all (Class C). As a result, the net asset value per share of the classes will differ at times. Expenses of a Fund allocated to a particular class of shares of that Fund will be borne on a *pro rata* basis by each outstanding share of that class.

10. Applicants also are requesting amendments to the Prior Order and the Income Trust Order in connection with certain proposed changes to the Shearson Lehman Brothers 401 (k) Program (the "401 (k) Program"). As currently structured and described in the Prior Order, plans participating in the 401 (k) Program ("Participating Plans") are offered only Class B shares of the Funds. In connection with the implementation of the Amended Variable Pricing System, Class A and Class D shares also will be made available as investment alternatives for a Participating Plan, depending on the amount of its initial investment and the number of employees eligible to participate in the Participating Plan.

11. Participating Plans investing up to $250,000 in one or more Funds that

offer one or more classes of shares subject to a sales charge and/or CDSC and with less than 100 employees eligible to participate will be eligible to purchase either Class A shares, subject to any applicable front-end sales charge, or Class B shares, subject to an eight-year 3% CDSC as is currently the case. Participating Plans investing at least $250,000 but not more than $750,000 in one or more Funds that offer one or more classes of shares subject to a sales charge and/or CDSC, or Participating Plans with at least 100 but not more than 250 employees eligible to participate may purchase either Class A shares or Class D shares. Participating Plans investing $750,000 or more in one or more Funds with sales loads or Participating Plans with 250 or more employees eligible to participate will purchase Class A shares with the applicable front-end sales load waived. Class A shares acquired without a sales charge through the 401 (k) Program would not be subject to a CDSC.

12. Those Participating Plans described above that are eligible to purchase either Class A or Class B shares and purchase Class B shares will be offered the opportunity to exchange all of their Class B shares into Class A shares eight years after acquiring their first Class B share. Such Plans will be notified of the pending exchange in writing approximately 60 days before the eighth anniversary of the purchase date and, unless the exchange offer has been rejected in writing, the exchange will occur on or about the eighth anniversary date. Similarly, beginning in December 1993 and each year thereafter, those Participating Plans described above that are eligible to purchase either Class A or Class D shares and hold Class D shares valued at $750,000 or more in any Fund or Funds that offer one or more classes of shares subject to a sales charge and/or CDSC will be offered the opportunity to exchange all of their Class D shares into Class A shares. Such Plans will be notified of the pending exchange in writing within 30 days after the last business day of the calendar year, and, unless the exchange offer has been rejected in writing, the exchange will occur on or about the last business day of March in the following calendar year. Applicants believe it is unlikely that any trustee or other fiduciary would elect not to accept the exchange offer with respect to either of the foregoing exchange offer programs.

13. Shares of Income Trust currently are sold subject to a front-end sales charge, a rule 12b–1 plan providing for a service fee and, pursuant to the Income Trust Order, subject to a CDSC of 1.00% of the amount redeemed (if redeemed within one year of purchase) that may be waived under the circumstances described in the Income Trust Order. Income Trust intends to continue to impose a CDSC as contemplated by the Income Trust Order. However, Applicants request an amendment to the Income Trust Order so that, in addition to the waiver categories listed in the Order, the CDSC would be waived in its entirety for shares purchased by Participating Plans.

Applicants' Legal Analysis

1. Applicants request an amendment to the Prior Order, pursuant to section 6(c) of the 1940 Act, (i) to the extent that the proposed issuance and sale of additional classes of shares pursuant to the proposed Amended Variable Pricing System might be deemed to result in the issuance of a "senior security" within the meaning of section 18(g) of the 1940 Act and thus be prohibited by section 18(f)(1), and, in addition, to violate the equal voting provisions of section 18(i), and (ii) to the extent necessary to permit the imposition of the CDSC arrangement described above with respect to certain redemptions of Class A shares.

2. Applicants submit that shareholders would benefit by providing all distribution arrangements in a single Fund. The Amended Variable Pricing System permits an investor to choose the method of purchasing shares that is most beneficial given the length of time the investor expects to hold his or her shares and other relevant circumstances. Investors who would qualify for a significant discount on the front-end sales load may determine that payment of a front-end load is preferable to payment of a CDSC and higher 12b–1 plan fees. Conversely, investors whose orders would not qualify for a discount may prefer to defer the sales load and have all their funds invested in Class B shares initially. Moreover, investors who intend to remain invested in the Funds for a period in excess of eight years may prefer to purchase Class B shares, rather than Class D shares, so that their investment remains subject to the distribution fee for a finite period. Investors who are uncertain as to their holding period or who expect it to be shorter than the applicable Class B CDSC period may prefer to purchase Class D shares. Finally, Class C shares are appropriate for investors who cause the Funds to incur *de minimis* distribution costs. Thus, Applicants submit that the Amended Variable Pricing System enables the investor to choose from a broader array of choices the sales financing method that best suits his or her particular situation.

3. Applicants also submit that the Amended Variable Pricing System does not raise any of the legislative concerns that section 18 of the 1940 Act was designed to ameliorate. Since each class of shares will be redeemable at all times (subject to the same limitations set forth in the Fund's prospectus and statement of additional information), since no class of shares will have any preference or priority over any other class in the Fund in the usual sense (that is, no class will have distribution or liquidation preference with respect to particular assets and no class will be protected by any reserve or other account) and since the similarities (and, with respect to the rule 12b–1 plans, associated voting rights, conversion feature, and the exchange privileges, dissimilarities) of the classes of shares will be disclosed in the Funds' prospectuses and statements of additional information, investors will not be given misleading impressions as to the safety or risk of any class of shares.

4. The reasons set forth in the application for the Prior Order for the imposition of a CDSC with respect to the Class B shares similarly apply with respect to the CDSC for the Class A shares described above and are incorporated by reference in this application. The CDSC payable on these Class A shares will be paid to the Distributor to offset its marketing costs and prior commission payments to its financial consultants. The Distributor may also use the CDSC to pay other costs allocated to the Distributor's distribution activities. Applicants agree that any order granting the requested relief shall be subject to the condition that Applicants will comply with the provisions of proposed rule 6c–10 as set forth in Investment Company Act Release No. 16619 (Nov. 2, 1988), as the rule is currently proposed, and as it may be reproposed, adopted or amended.

5. As described above, Applicants also request an amendment to the Income Trust Order in connection with the proposed changes to the 401(k) Program and to conform certain other features of the CDSC arrangement permitted by that Order with the Amended Variable Pricing System.

Applicants' Condition

Applicants agree that any order granting the requested relief shall be subject to the following conditions.

A. Conditions Relating to the Amended Variable Pricing System

1. Each class of shares will represent interests in the same portfolio of

investments of a Fund and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same Fund will relate solely to: (a) the designation of each class of shares of a Fund; (b) the impact of the respective sales charges, if any, for each class of shares (*e.g.*, Class A shares would be subject to a front-end sales load, Class B shares would be subject to a CDSC, and Class C and Class D shares would not be subject to a sales load); (c) expenses assessed to a class as a result of a rule 12b–1 plan providing for a service and/or distribution fee (*e.g.*, Class A shares would pay a service fee; Class B and Class D shares would pay a service fee and a distribution fee; and Class C shares would not pay a service fee or a distribution fee) and any other costs relating to obtaining shareholder approval of the rule 12b–1 plan for that class or an amendment to its rule 12b–1 plan; (d) different Class Expenses for each class of shares, which are limited to: (1) transfer agency fees as identified by the transfer agent as being attributable to a specific class (*e.g.*, a higher transfer agency fee may be imposed on the Class B shares than on the Class A, Class C, or Class D shares, a higher transfer agency fee may be imposed on the Class D shares than on Class A shares, and a higher transfer agency fee may be imposed on the Class A shares than on Class C shares); (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) fees of members of the Governing Boards incurred as a result of issues relating to one class of shares; (e) voting rights on matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment, or termination of a rule 12b–1 plan in accordance with the procedures set forth in rule 12b–1; (f) the different exchange privileges of the various classes of shares as described in the prospectuses (and as more fully described in the statements of additional information) of the Funds; and (g) the conversion feature applicable only to the Class B shares. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission.

2. The members of the Governing Boards of each Fund, including a majority of the members who are not "interested persons" of the Fund, as that term is defined in section 2(a)(19) of the 1940 Act ("Independent Board Members"), shall have approved the Amended Variable Pricing System prior to the implementation of the Amended Variable Pricing System by that particular Fund. The minutes of the meeting of the members of the Governing Boards of each of the Funds regarding the deliberations of their members with respect to the approvals necessary to implement the Amended Variable Pricing System will reflect in detail the reasons for determining that the Amended Variable Pricing System is in the best interests of the Funds and their respective shareholders.

3. The initial determination of the Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the Governing Board of the affected Fund, including a majority of the Independent Board Members. Any person authorized to direct the allocation and disposition of monies paid or payable to a Fund to meet Class Expenses shall provide to the Governing Board, and the Governing Board shall review, at least quarterly, a written report of the amounts so expended and the purpose for which the expenditures were made.

4. On an ongoing basis, the members of the Governing Boards of the Funds, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The members of the Governing Boards of each Fund, including a majority of the Independent Board Members, shall take such action as is reasonably necessary to eliminate any conflicts that may develop. The Advisers and the Distributor, acting through the Administrator, will be responsible for reporting any potential or existing conflicts to the members of the Governing Boards. If a conflict arises, the Advisors and the Distributor at their own costs will remedy the conflict up to and including establishing a new registered management investment company.

5. If a Fund implements any amendment to its rule 12b-1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class A shares under the plan, existing Class B shares will stop converting into Class A shares unless the Class B shareholders, voting separately as a class, approve the proposal. The members of the Governing Board will take such action as is necessary to ensure that existing Class B shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to Class A shares as they existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Class A shares. If deemed advisable by the members of the Governing Board to implement the foregoing, such action may include the exchange of all existing Class B shares for a new Class ("New Class B"), identical to existing Class B shares in all material respects except that New Class B will convert into New Class A. New Class A or New Class B may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the members of the Governing Board reasonably believe will not be subject to federal taxation. In accordance with condition 4 above, any additional cost associated with the creation, exchange, or conversion of a New Class A or New Class B shares shall be borne solely by the Advisors and the Distributor. Class B shares sold after the implementation of the proposal may convert into Class A shares subject to the higher maximum payment, provided that the material features of the Class A plan and the relationship of such plan to the Class B shares are disclosed in an effective registration statement.

6. Any rule 12b–1 plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares that has been created in connection with the implementation of the Variable Pricing System for different classes of shares within any Fund and that has not had its rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of that class for approval at the next meeting of shareholders after the initial issuance of the class of shares, except that no such shareholder approval will be required if the registration statement or any amendment to the registration statement necessary to offer such class became effective on or after November 6, 1992, unless an undertaking in the registration statement or the amendment to the registration statement provides to the contrary. Any such shareholder meeting required by this condition is to be held within 16 months of the date

that the registration statement relating to the class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer the class of shares first become effective.

7. The members of the Governing Boards of the Funds will receive quarterly statements of distribution revenues and expenditures for each respective class of shares ("Statements") complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of one class of shares will be used to support the rule 12b–1 fee charged to shareholders of that class of shares. Expenditures not related to the sale of a specific class of shares will not be presented to the members of the Governing Boards to support rule 12b–1 fees charged to shareholders of that class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Board Members in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time and on the same day and will be in the same amount, except that fee payments made under the rule 12b–1 plans relating to a particular class will be borne exclusively by each respective class and except that any Class Expenses may be borne by the applicable class of shares.

9. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses among the various classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report to Applicants, attached as an exhibit to the application, stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in that report. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon this review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Independent Examiner with respect to these reports, following a request by the Funds that the Funds agree to make, will be available for inspection by the Commission's staff upon the written request for these work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System," and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the several classes of shares and the proper allocation of income and expenses among the several classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (9) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongong basis at least annually in the ongoing reports referred to in condition (9) above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

11. The prospectuses of the Funds will include a statement to the effect that a financial consultant and any other person entitled to receive compensation for selling shares of the Funds may receive different levels of compensation for selling one particular class of shares over another in a Fund.

12. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards. Applicants' compliance standards will require all investors eligible to purchase Class C shares of a Fund offering such shares to invest in Class C, rather than in shares of any other class of the Fund.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the members of the Governing Boards of the Funds with respect to the Amended Variable Pricing System will be set forth in guidelines that will be furnished to the members of the Governing Boards as part of the materials setting forth the duties and responsibilities of the members of the Governing Boards.

14. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares offered through the prospectus. Class A, Class B, and Class D shares will be offered and sold through a single prospectus. If Class C shares of a Fund are offered solely via a separate prospectus, the prospectus for the other classes of that Fund will identify the existence of the Class C shares of the Funds and will identify the entities eligible to purchase these shares, and the Class C prospectus will identify the existence of the Fund's other classes of shares. Either shares of any Additional Class of a Fund will be offered and sold through the same prospectus through which Class A, Class B, and Class D shares of the Fund are offered and sold or the prospectus through which shares of any Additional Class are offered and sold will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares of the Fund, regardless of whether all classes of shares of the Fund are offered through the prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of the Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expenses and/or performance data applicable to all classes of shares. Advertising materials reflecting the expenses or performance data for Class C shares will be available only to Class C eligible investors. The information provided by Applicants for

publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares separately.

15. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

16. Class B shares will convert to Class A shares on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge.

B. Condition Relating to the CDSC

Applicants will comply with the provisions of proposed rule 6c–10 under the 1940 Act (see Investment Company Act Release No. 16619) (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–31831 Filed 12–30–92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1748]

Defense Trade Advisory Group; Partially Closed Meeting

The Defense Trade Advisory Group (DTAG) will meet at 2 p.m., Tuesday, February 2, 1992 in the Loy Henderson Conference Room, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. This advisory committee provides advice on policies, laws, and regulations affecting defense trade.

The open sessions, which will occur at the beginning and end of the meeting, will include reports on DTAG Working Group progress, accomplishments, and future projects from the Working Group chairs. Members of the public may attend the open sessions as seating capacity allows, and will be given the opportunity to participate in the discussion in accordance with the Chairman's instructions.

As access to the Department of State is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by Friday, January 22, 1993. Each person should provide his name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat at telephone number 202–647–4231 or fax number 202–647–4232 (Attention: Eva Chesteen). Attendees must carry a valid photo ID with them to the open portion of the session. They should enter the building through the C-Street diplomatic entrance, where Department personnel will escort them to the Loy Henderson auditorium.

Individual Working Group meetings, which will be closed to the public, will involve classified briefings and discussion of classified information pursuant to Executive Order 12356. The disclosure of both classified and proprietary information essential to formulation of policies on defense trade would substantially undermine U.S. defense trade relations with foreign competitors. Therefore, this portion of the meeting will be closed to the public, pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. 552b (c)(1), and 5 U.S.C. 552b (c)(9)(B).

For further information, contact Linda Lum of the DTAG Secretariat, U.S. Department of State, Office of Defense Trade Policy (PM/DTP), room 7815 Main State, Washington, DC., 20520–7310. She may be reached at telephone number 202–647–4231, fax number 202–647–4232.

Dated: December 22, 1992.

Rand Beers,

Deputy Assistant Secretary, Bureau of Politico-Military Affairs.

[FR Doc. 92–31808 Filed 12–30–92; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92–076]

Guidelines for Recertification of Alternative Voluntary Groups in Lieu of a Council

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Cook Inlet, and Prince William Sound, Alaska. The purpose of this notice is to inform the public that the Coast Guard has developed guidelines to assist the advisory groups when seeking recertification under the Act.

EFFECTIVE DATE: January 1,1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Project Manager, Marine Environmental Protection Division, (G–MEP), (202) 267–0500, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

Paragraph (o) of the Act (33 U.S.C. 2732(o)), permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the oil terminal facilities in Cook Outlet and Prince William Sound in lieu of a council of the type specified in 33 U.S.C. 2732(d), if certain conditions are met. The Act requires that each group enter into a contract to ensure annual funding and receive annual certification from the President that it fosters the general goals and purposes of the Act and is broadly representative of the community and interests in the vicinity of the terminal facilities. Accordingly, in 1991, the President granted certification to both the Cook Inlet Regional Citizens' Advisory Council and the Prince William Sound Regional Citizens' Advisory Council, alternative voluntary advisory groups.

The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard and has been redelegated to the Chief, Office of Marine Safety, Security and Environmental Protection. The Coast Guard recertified both councils in 1992 as alternative voluntary advisory groups (57 FR 14440, 42802). On December 17, 1993, the Coast Guard extended the certification for the Prince William Sound Voluntary Alternative Advisory Group through June 30, 1993. The Coast Guard has now developed guidelines for recertification of voluntary advisory groups. Recertification requests which incorporate the information suggested in the guidelines will assist the Commandant in recertifying that the groups foster the general goals and purposes of 33 U.S.C. 2732 and that they are broadly representative of the respective communities and interests.

Guidelines

The following information would assist the Commandant in recertifying the Prince William Sound Regional Citizens' Advisory and Cook Inlet Regional Citizens' Advisory Councils:

(a) Membership information including—

(1) Selection and appointment process for the advisory group;

(2) A list of board of directors; and

(3) A list of all group members and where they reside.

(b) Whether the advisory groups ensure that meetings are publicized and accessible to members of the communities in the vicinity of the terminal facilities and Prince William Sound or Cook Inlet.

(c) The interest groups represented.

(d) The activities undertaken by the advisory group, such as—

(1) Review of the operation and maintenance of terminals and tankers;

(2) Participation in the periodic review of the respective oil spill prevention and response plans;

(3) Monitoring of periodic drills and the cleanup of actual discharges;

(4) Review, and/or coordination of scientific studies with recognized experts selected by the group;

(5) Review of developments in spill prevention and cleanup technology;

(6) Review of port operations, organizations, safety systems, and incidents, and what recommendations were provided to ensure safer transportation of oil;

(7) Actions undertaken to implement the environmental monitoring strategy;

(8) Specific environmental projects;

(9) Environmental conditions and locations monitored;

(10) Environmental impacts assessed; and

(11) Scientific experts, universities and scientific institutions consulted.

(e) Abstracts of any ongoing reports, studies, etc. related to minimizing impacts of operations of terminal facilities and crude oil tankers.

(f) A financial summary which includes—

(1) Budget and spending plan for coming year;

(2) Work Plans for budget approved studies and projects;

(3) Short term strategy (covering budget year);

(4) Long term plan that identifies organizational goals, objectives, and operating environment projected over next 3 to 5 years; and

(5) Previous year's annual report.

(g) Documentation that funding has been secured as prescribed by 33 U.S.C. 2732(o).

(1) With respect to the Prince William Sound Program, there must be a contract for the duration of the operation of the Trans-Alaska Pipeline System with the Alyeska Pipeline Service Company (or any of its owner companies).

(2) With respect to the Cook Inlet Program, there must be a contract with the terminal facilities, offshore facilities, or crude oil tanker owners and operators to fund the organization on an annual basis.

Application Procedures

Alternative voluntary advisory groups should apply to the Coast Guard for recertification annually. Applications should be by letter, addressed to Chief, Office of Marine Safety, Security and Environmental Protection (G–M), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

Review

A notice will be published in the **Federal Register** to advise the public of any certifications granted.

Dated: December 23, 1992.

A. E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–31833 Filed 12–30–92; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

[Docket No. S–895]

Sea-Land Service, Inc./ American President Lines, Ltd.; Notice of Application for Written Consent and/or Permission Under Sections 506 and 805(a) of the Merchant Marine Act, 1936, as Amended, To Operate Vessel ALMERIA LYKES in the Domestic Trade

Notice is hereby given that Sea-Land Service, Inc. (Sea-Land) by application dated December 24, 1992, has applied for written consent under section 506 of the Merchant Marine Act, to operate the U.S.-built, U.S.-flag vessel ALMERIA LYKES (ex-PRESIDENT McKINLEY) in a temporary, purely domestic service itinerary between Jacksonville, Florida, and Puerto Rico for the remaining construction-differential subsidy (CDS) life of the vessel, a period of less than 60 days from the date that the vessel would be placed in domestic service. The ALMERIA LYKES was built in 1968 under a CDS contract which completes 25-years on March 17, 1993. Sea-Land will bareboat charter the ALMERIA LYKES from its owner American President Lines, Ltd. (APL) for an initial period of three months with options for up to a total of 12 months. The ALMERIA LYKES will be deployed as a replacement vessel for each of the four U.S.-flag Sea-Land vessels currently deployed on mixed voyages serving Puerto Rico, which are to be rotated out of service beginning on January 28, 1993 and ending approximately July 1993 for Coast Guard required drydocking inspections and maintenance and repairs in U.S. shipyards.

The four CDS-built vessels now providing service to Puerto Rico on mixed voyages are the SEA-LAND CRUSADER, SEA-LAND DISCOVERY, SEA-LAND EXPEDITION, and SEA-LAND CHALLENGER which maintain an itinerary of:

Leg I—Elizabeth/San Juan/Haina/Jacksonville
Leg II—Jacksonville/San Juan/Kingston/New Orleans
Leg III—New Orleans/San Juan/Haina/Elizabeth

The ALMERIA LYKES is not a perfect substitute for any of the Sea-Land vessels that will be rotated out of service. The ALMERIA LYKES' smaller TEU capacity and slower service speed will make it difficult, if not impossible, to maintain all of the current mixed voyage itineraries of the Sea-Land vessels currently calling at Puerto Rico. Accordingly, Sea-Land proposes to maintain mixed voyage itineraries for sailings from Elizabeth and from New Orleans with Sea-Land owned vessels, but to employ the ALMERIA LYKES in a JACKSONVILLE/SAN JUAN/JACKSONVILLE itinerary omitting the KINGSTON, JAMAICA call currently made by Sea-Land vessels rotating through that Leg II voyage itinerary. Thus, the revised Americas Division Service itinerary would entail the three in service Sea-Land owned vessels sailing ELIZABETH/SAN JUAN/KINGSTON/NEW ORLEANS/SAN JUAN/HAINA/ELIZABETH, while the ALMERIA LYKES provides service between JACKSONVILLE and SAN JUAN.

As a contingent safeguard against any potential competitive impact on other carriers offering liner or tug and barge services from JACKSONVILLE to PUERTO RICO, Sea-Land is willing to limit its weekly carryings under the written consent on the ALMERIA LYKES to its average actual 1992 weekly carryings of domestic cargo from JACKSONVILLE to PUERTO RICO.

Inasmuch as APL is the owner of the ALMERIA LYKES, and is a subsidized operator, written permission under section 805(a) of the Act will be required for Sea-Land to operate the vessel as described above, in domestic trade. APL's application threfor is dated December 24, 1992.

Any person, firm, or corporation having any interest in the application for section 506 consent and/or section 805(a) written permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business on January 8, 1993. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition should state clearly and concisely the grounds of interest and the alleged facts relied on for relief. If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the maritime Administration will take such action as may be deemed appropriate. In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic operations.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS))

By Order of the Maritime Administration.

Dated: December 28, 1992.

James E. Saari,

Secretary.

[FR Doc. 92-31869 Filed 12-30-92; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. 92-71; Notice 1]

Hackney and Sons, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Hackney and Sons, Inc. (Hackney) of Washington, North Carolina has determined that some of its trailers fail to comply with 49 CFR 571.121, Federal Motor Vehicle Safety Standard No. 121, "Air Brake Systems," and has filed an appropriate report pursuant to 49 CFR part 573. Hackney has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Between June 1987 and May 1991, Hackney manufactured 130 trailers which are believed not to comply with the brake release time requirements of Standard No. 121 for trailers designed to tow another vehicle with air brakes. Between May 1991 and October 1992 Hackney produced 131 of the same type of trailer which are believed not to comply with both the brake actuation and release time requirements of the standard.

I. Brake Release Times

A. Release Time Requirements of Standard No. 121

In Standard No. 121, vehicles manufactured before May 3, 1991 have the option to comply with the release time requirements of either section S5.3.4.3 (hereinafter "old brake release test requirement") or section S5.3.4.1 (hereinafter "new brake release test requirement"). Vehicles manufactured on or after May 3, 1991 must comply with the new brake release test requirement.

The old brake release test requirement is that "[w]ith an initial service brake chamber air pressure of 95 pounds per square inch (psi), the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, fall 5 psi in not more than * * * 0.65 seconds [this time interval is referred to as the release time] in the case of trailers. * * * A trailer * * * shall meet the above release time requirement with * * * the test rig shown in Figure 1(a) [of the standard]." The new brake release test requirement is that these trailers have a release time that does not exceed 1.00 second when using the test rig depicted in Figure 1 of the standard, which is a different test rig from that in Figure 1(a). From this point on, the test rigs in Figures 1 and 1(a) will be referred to as "new test rig" and "old test rig," respectively.

B. Hackney Brake Release Time Tests

Hackney tested two samples of model year 1993 trailers using both the old brake release test requirement and the new brake release test requirement. In a phone conversation, Curtis B. Brookshire, Director of Research and Development of Hackney, indicated that there have been no air brake design changes from model years 1987 to 1993. Therefore, Mr. Brookshire expected that the pre-model year 1993 trailers would perform at the same level of noncompliance as the 1993 trailers in the air brake timing tests.

In the release time tests using the old brake release test requirement, the times ranged from 0.684 to 0.690 seconds, exceeding the maximum of 0.65 seconds allowed by the standard. These results placed the trailers manufactured before May 3, 1991 out of compliance with the release time portion of the standard.

In the release time tests using the new brake release test requirement, the times ranged from 1.344 to 1.428 seconds, exceeding the maximum of 1.00 second allowed in the standard. These results placed the trailers manufactured on or after May 3, 1991 out of compliance with the release time requirements of the standard.

II. Brake Actuation Times

A. Actuation Time Requirements of Standard No. 121

Vehicles manufactured before May 3, 1991 have two actuation time options. Vehicles can either comply with the actuation time requirements of sections S5.3.3.3 (hereinafter "old brake actuation test requirement") or with S5.3.3.1 (hereinafter "new brake actuation test requirement"). Vehicles manufactured on or after May 3, 1991 must comply with the new brake actuation test requirement.

The old brake actuation test requirement is that "[w]ith an initial service brake chamber air pressure of 100 pounds per square inch (psi), the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, reach 60 psi in not more than * * * 0.30 seconds [this time interval is referred to as the actuation time] in the case of trailers. * * * A trailer * * * shall meet the above actuation time requirement with * * * the test rig shown in Figure 1(a) [old test rig]." The new brake actuation test requirement is that these trailers have an actuation time that does not exeed 0.50 seconds when using the test rig in Figure 1 (new test rig).

B. Hackney Brake Actuation Time Tests

Hackney tested the same model year 1993 trailers in the actuation time tests as it used for the release time tests.

When using the old brake actuation test requirement, the actuation times ranged from 0.204 to 0.216 seconds.

These times comply with the requirement of no more than 0.30 seconds required in the old brake actuation test requirement. However, this requirement is not applicable to post May 3, 1991 vehicles.

In the tests using the new brake actuation test requirement, the actuation times ranged from 0.582 to 0.636 seconds. These test results did not comply with the maximum 0.50 second actuation time required in the new brake actuation test requirement. These results place the trailers manufactured on or after May 3, 1991 out of compliance with the actuation time requirements of the standard.

III. Hackney Rationale

Hackney believes that the noncompliances are inconsequential as they relate to motor vehicle safety for the following two reasons:

1. The actuation times on the post-May 3, 1991 units comply with the pre-May 3, 1991 requirements of the standard.
2. The release times on both the pre- and post-May 3, 1991 units are only slightly out of compliance with the pre-May 3, 1991 portion of the standard.

In addition, Hackney cited comments on a final rule, which NHTSA issued on May 1, 1989, amending the timing requirements of Standard No. 121 (54 FR 18890). Hackney stated that these materials supported its petition, without offering elaboration. The materials Hackney cited are as follows:

"MVMA also asserted that *NHTSA's own test results do not support the significance of combination timing on trailer push, jackknifing, or accident avoidance.*" (54 FR 18893) "Bendix stated that it believes that, for combination vehicles, faster application times coupled with improved timing balance will result in shorter stopping distances and better driving control. That commenter stated that it believes also the proposed changes are in the proper direction and are technically feasible, although *it is unaware of data to substantiate performance improvements.*" (54 FR 18894) "GM argued further that while NHTSA has implied that the kingpin forces measured are largely the result of the brake timing existent on the tested vehicle combinations, those forces are actually a function of brake system pneumatic balance, torque balance, brake application technique and timing. *The commenter asserted that NHTSA has demonstrated neither that there is a need to lower such forces nor that the revisions proposed would serve to achieve that end.*" (54 FR 19894) "One commenter, Volvo White opposed the adoption of gladhand timing requirements. That company argued that manufacturer's compliance data would be invalidated, that many of the changes implemented over the last ten years to improve tractor trailer compatibility would no longer be available, and that *NHTSA's research does not justify the need for the proposed requirements.*" (54 FR 18895) (emphasis original in all quotes).

Once Hackney discovered the noncompliance, it added a booster valve in the trailer brake system to correct both the actuation and release timing problems. Hackney stated that trailers currently in production fully comply with the actuation and release time requirements of Standard No. 121.

Interested persons are invited to submit written data, views, and arguments on the petition of Hackney, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments are received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date also will be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 1, 1993.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: December 23, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–31626 Filed 12–30–92; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 252
Thursday, December 31, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

* * * * *

DATE AND TIME: Tuesday, January 5, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 7, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992–41: Jon C. Perry on behalf of Insurance Coalition of America
Public Hearing on Best Efforts Rulemaking
Legislative Recommendations, 1993
Routine Administrative Matters

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 92–31934 Filed 12–29–92; 3:03 pm]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 57, No. 252
Thursday, December 31, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–83–000, et al.]

Tampa Electric Company, et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 92–30199 beginning on page 59107 in the issue of Monday, December 14, 1992, on page 59107, in the third column, under 7. **CENTRAL VERMONT PUBLIC SERVICE CORPORATION**, "[Docket No. ER93–283–000]" should read "[Docket No. ER93–238–000]".

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AD62

Clarification of Statutory Authority for Purposes of Criminal Enforcement

Correction

In rule document 92–28228 beginning on page 55062 in the issue of Tuesday, November 24, 1992, make the following correction:

§ 110.67 [Corrected]

On page 55080, in the third column, in the first paragraph, in § 110.67(a), several lines of text were left out. Beginning in the fourth line after "161o," the paragraph should have read "of the Act. For purposes of section 223, all the regulations in part 110 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section."

BILLING CODE 1505–01–D

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees

Correction

In rule document 92–7828 beginning on page 11800 in the issue of Tuesday, April 7, 1992, make the following corrections:

§ 2634.304 [Corrected]

1. On page 11810, in the third column, in § 2634.304(c), in the sixth line, "§ 2634.205(o))" should read "§ 2634.105(o))".

2. On page 11811, in the second column, in § 2634.304(e)(2), in the first line, "term" should read "item".

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 532, 550, and 551

RIN 3206–AE32

Pay Administration Under the Fair Labor Standards Act; Overtime Pay Provisions

Correction

In rule document 92–30415 beginning on page 59277 in the issue of Tuesday, December 15, 1992, on page 59278, in the first column, in the third paragraph, in the ninth line, "employees is" should read "employees if".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ASO–15]

Alteration of VOR Federal Airways, Jet Routes and Reporting Points; FL

Correction

In rule document 92–26979 beginning on page 53438 in the issue of Tuesday, November 10, 1992, make the following corrections:

§ 71.1 [Corrected]

1. On page 53439, in the first column, under § 71.1, V–3 [Revised], in the last line, before "R–2935" insert "R–2934,".

2. On the same page, in the second column, under § 71.1, V–295 [Revised], in the first line, before "Andrew" insert "From".

3. On the same page, in the same column, under § 71.1, V–437 [Revised], in the first line, before "Andrew" insert "From".

BILLING CODE 1505–01–D

federal register

Thursday
December 31, 1992

Part II

Environmental Protection Agency

40 CFR Parts 60 and 63

Regulation of Emissions of Certain Organic Hazardous Air Pollutants and Revision of Test Methods; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-4535-5]

National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Seven Other Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA is proposing to regulate the emissions of certain organic hazardous air pollutants from synthetic organic chemical manufacturing industry (SOCMI) production processes which are part of major sources under section 112 of the Clean Air Act as amended in 1990 (the Act). The proposed rule, referred to as the hazardous organic NESHAP or the HON, would require sources to achieve emission limits reflecting the application of the maximum achievable control technology consistent with section 112(d) of the Act. The proposed rule would reduce the emissions of 149 of the organic chemicals identified in the Act's list of 189 hazardous air pollutants at both new and existing SOCMI sources and from equipment leaks at sources in the following processes: Styrene/butadiene rubber production; polybutadiene production; chlorine production; pesticide production; chlorinated hydrocarbon use; pharmaceutical production; and miscellaneous butadiene use. The EPA is also proposing Methods 304 and 305 with the standard. These methods can be used to demonstrate compliance with control requirements for wastewater streams.

A public hearing will be held, if requested, to provide interested persons with an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before March 31, 1993.

Public Hearing. If anyone contacts EPA to speak at a public hearing by January 21, 1993, a public hearing will be held on February 25, 1993 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Julia Stevens at the address below by January 21, 1993.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by January 21, 1993 (contact Ms. Julia Stevens at (919) 541-5578).

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to the EPA's Air Docket (LE-131), Attn: Docket Number (see list following address), room M1500, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments that address areas pertinent to the proposed rule as a whole or that are applicable to more than one kind of emission point, such as general policy or legal comments, comments on the overall impacts of the standards, and comments on test methods should be marked Attn: Docket Number A-90-19. Technical comments specific to process vents should be marked Attn: Docket Number A-90-19; technical comments about equipment leaks and any other comments about the negotiated regulation for equipment leaks should be marked Attn: Docket Number A-90-20; technical comments about storage vessels should be marked Attn: Docket Number A-90-21; technical comments about transfer operations should be marked Attn: Docket Number A-90-22; and comments specific to wastewater operations should be marked Attn: Docket Number A-90-23.

Public Hearing. If anyone contacts EPA requesting to present oral testimony on the rule being proposed today, a public hearing will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Julia Stevens, Standards Development Branch, Emission Standards Division, U. S. Environmental Protection Agency, Office of Air Quality Planning and Standards (MD-13), Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Background Information Document. The background information document (BID) for this rulemaking may be obtained from the U. S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Refer to EPA-453/D-92-016a, b, and c. The HON BID comprises three volumes. Persons requesting copies of the BID should specify the volume(s) required. For information on the methodology and results of the analysis of national impacts, request BID Volume 1A. For information on emission control technologies and cost procedures, request BID Volume 1B. For information on the development of models for the five kinds of emission points, request BID Volume 1C.

Dockets. The dockets listed above under ADDRESSES contain supporting information used in developing the proposed rule. Supporting information used in developing the negotiated standard for equipment leaks is available in Docket Number A-89-10. These dockets are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general information on the proposed rule and information on the equipment leak standard, contact Dr. Janet S. Meyer, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5254. For information on emissions averaging, contact Ms. Daphne L. McMurrer, Standards Development Branch, at the same address, telephone number (919) 541-0248. For technical information on wastewater handling operations, contact Mr. K. C. Hustvedt, Chief, Petroleum Section, Chemicals and Petroleum Branch, at the same address, telephone number (919) 541-5395. For technical information on the other kinds of emission points, contact Mr. Robert E. Rosensteel, Chief, Chemical Manufacturing Section, Chemicals and Petroleum Branch, at the same address, telephone number (919) 541-5608.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed standards.

I. Definitions, Acronyms, and Abbreviations
  A. Definitions
  B. Acronyms
  C. Abbreviations
II. Policy Approach
  A. Background
  B. Overview of the Proposed Rule
  C. Legal Framework
  D. Policy Goals
  E. Major Policy Decisions
III. Summary of Proposed Rule
  A. Summary of Subpart F
  B. Summary of Subpart G
  C. Summary of Subpart H
IV. Summary of Impacts of Proposed Rule
  A. Environmental Impacts
  B. Energy Impacts
  C. Cost Impacts
  D. Economic Impacts
V. Emissions and Impacts Estimation Methodology
  A. Overview

  - B. Control Technologies for Impacts Estimation
  - C. National Emissions and Control Cost Calculations
- VI. Rationale for Provisions in Subpart F
  - A. Selection of Source Categories
  - B. Selection of Emission Points
- VII. Rationale for Provisions in Subpart G
  - A. Selection of Emission Control Requirements
  - B. Selection of Process Vents Provisions
  - C. Selection of Storage Vessel Provisions
  - D. Selection of Transfer Loading Operations Provisions
  - E. Selection of Wastewater Collection and Treatment Operations Provisions
  - F Selection of Emissions Averaging Provisions
  - G. Selection of Reporting and Recordkeeping Requirements
  - H. Selection of Compliance Provisions
- VIII. Rationale for Provisions in Subpart H
  - A. Background
  - B. Scope and Applicability
  - C. Background Information on Equipment Leaks
  - D. Development of Framework and Selection of Maximum Achievable Control Technology
  - E. Selection of Format of Standards
  - F Selection of Emission Limits and Work Practice Requirements
  - G. Test Methods and Procedures
  - H. Recordkeeping and Reporting
- IX. Administrative Requirements
  - A. Coordination with Other Clean Air Act Requirements
  - B. Executive Order 12291
  - C. Paperwork Reduction Act
  - D. Regulatory Flexibility Act
  - E. Review

I. Definitions, Acronyms, and Abbreviations

The following lists of definitions, acronyms, and units of measure are provided to aid in reading the preamble to the proposed rule. Additional definitions are provided near the beginning of the proposed subparts F, G, and H.

A. Definitions

The following definitions were developed for use in preparing and describing the proposed rule.

Control device means any equipment used for recovering or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, carbon absorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents, recovery devices are not considered control devices.

Discount factor is a specified percentage used to reduce the value of emission credits. A discount factor of 20 percent reduces 10 Mg of potential emission credits to 8 Mg of actual emission credits that could be used to balance an emissions debit. For regulatory purposes, a 20 percent discount factor is represented as 0.8 in credit estimation equations.

Emissions averaging is a means of complying with subpart G of this proposed rule. Emissions averaging allows a source to create emission credits by reducing emissions from specific points to a level below that required by subpart G. Those credits are used to offset emission debits from points that are not controlled to the level required by subpart G.

Emission credits are excess emission reductions above those required by subpart G that are used to offset emission debits in emissions averaging.

Emission debits are increased emissions that result when a source elects not to control a Group 1 emission point to the level required by subpart G.

Emission point means an individual process vent, storage vessel, transfer rack, wastewater stream, or equipment leak.

Group 1 emission point means an individual process vent, storage vessel, transfer rack, or wastewater stream that satisfies the applicability criteria for the control requirements of subpart G.

Group 2 emission point means an individual process vent, storage vessel, transfer rack, or wastewater stream that does not satisfy the applicability criteria for the control requirements of subpart G.

Halogenated vent stream or *halogenated stream* means a vent stream from a process vent or transfer operation determined to have a total concentration of halogen atoms (by volume) contained in organic compounds of 200 parts per million by volume or greater.

Hazardous Air Pollutant or *HAP* means any air pollutant listed under section 112(b) of the Clean Air Act.

Plant site means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Reference control technology means a device or devices that can be used to comply with the control requirements in subpart G. Subpart G specifies the reference control technologies for each kind of emission point and establishes a control efficiency that the devices should achieve when being used to comply with this rule.

Very volatile hazardous air pollutant or *very volatile HAP* means one of the chemicals listed in Table 8 of subpart G.

Volatile organics or *VO* refers to the portion of organic compounds (including both hazardous air pollutant and non-hazardous air pollutant organic compounds) in a wastewater stream that is measured by Method 25D, as found in 40 CFR part 60, appendix A.

Volatile organic hazardous air pollutant or *VOHAP* means the volatile portion of an individually-speciated organic hazardous air pollutant in a wastewater stream or a residual that is measured by proposed Method 305.

Waste management unit means any component, piece of equipment, structure, or transport mechanism used in conveying, storing, treating, or disposing of any waste, including a wastewater stream or a residual. Wastewater tanks are an example of a waste management unit.

Wastewater means organic hazardous air pollutant-containing water or process fluid discharged into an individual drain system and includes process wastewater, maintenance-turnaround wastewater, and maintenance wastewater. Organic hazardous air pollutant-containing water or process fluids contain at least 5 parts per million by weight total organic hazardous air pollutant and have a flow rate of 0.02 liter per minute, or greater, or a concentration of at least 10,000 parts per million by weight and any flow rate.

B. Acronyms

Acronyms	Term
BD	butadiene.
BID	background information document.
CFR	Code of Federal Regulations.
CMA	Chemical Manufacturers Association.
CO	carbon monoxide.
CTG	control techniques guideline.
CWA	Clean Water Act.
DMS	dual mechanical seal.
DOT	Department of Transportation.
EB/S	ethylbenzene/styrene.
EO	ethylene oxide.
E.O.	Executive Order.
EPA	Environmental Protection Agency.
FR	**Federal Register**.
HAP	hazardous air pollutant.
HON	hazardous organic national emission standards for hazardous air pollutants.
LDAR	leak detection and repair.
MACT	maximum achievable control technology.
NESHAP	national emission standards for hazardous air pollutants.
NO_x	nitrogen oxides.
NSPS	new source performance standards.
OMB	Office of Management and Budget.
OSHA	Occupational Safety and Health Administration.
P.L.	Public Law.
QIP	quality improvement program.
RCRA	Resource Conservation and Recovery Act.

Acronyms	Term
RIA	Regulatory Impact Analysis.
SIP	State Implementation Plan.
SMS	single mechanical seal.
SOCMI	synthetic organic chemical manufacturing industry.
TOC	total organic compound.
TRE	total resource effectiveness.
TACB	Texas Air Control Board.
TSDF	treatment, storage, and disposal facility.
VHAP	volatile hazardous air pollutant.
VO	volatile organics measurable by Method 25D.
VOC	volatile organic compound.
VOHAP	volatile organic hazardous air pollutant.

C. Abbreviations

Abbreviation	Unit of measure
bbl	barrel.
BOE	barrels of oil equivalent.
Btu	British thermal unit.
Btu/kW-hr	British thermal unit per kilowatt-hour.
°C	degrees Celsius.
°F	degrees Fahrenheit.
gal	gallon.
hr	hour.
kPa	kilopascals.
kW-hr/yr	kilowatt-hour per year.
lpm	liters per minute.
gal	gallons.
m^3	cubic meters.
Mg	megagrams.
mg	milligrams.
mg/dscm	milligram per dry standard cubic meter.
MW	megawatts.
ppb	parts per billion.
ppm	parts per million.
ppmv	parts per million by volume.
ppmw	parts per million by weight.
psia	pounds per square inch absolute.
scm/min	standard cubic meter per minute.
TJ	terajoules.
yr	year.

II. Policy Approach

This section provides background about the legal and policy criteria that the Administrator took into consideration in selecting the provisions of this proposed rule. It is included to give the reader a sense of the rule as a whole. To that end, the section includes background about the rule, a brief overview of the rule, some statutory history, a summary of the current statutory requirements for standards developed under Section 112 of the Act, and a discussion of the Agency's policy goals. This section concludes with a short discussion of the major policy decisions that the Administrator made to structure this proposed rule in such a way that it meets the statutory criteria and the Agency's policy goals.

A. Background

The regulation being proposed today, under Section 112 of the Act, is known as the hazardous organic NESHAP, or HON. The HON, as proposed, would set MACT for one source category and seven processes in other source categories. The entire SOCMI source category and equipment leaks from seven non-SOCMI processes are to be regulated.

The Act, as amended in 1990, requires that EPA promulgate standards for 40 source categories or subcategories emitting HAP's within 2 years of its enactment. In the Statement of the Managers accompanying the final bill, as enacted, Congress indicated that EPA should fulfill this initial statutory requirement by regulating the priority elements of the HON as it was under development during consideration of the bill. (136 Cong. Rec. H13198 (October 26, 1990).) This proposed rule would cover the HON, as Congress described it, and more. As such, this rulemaking, while regulating less than 40 source categories, will fulfill Congressional intent concerning what should have been regulated within 2 years of enactment.

The SOCMI, as a source category, emits a large volume and variety of HAP's relative to other source categories. In addition, individual SOCMI sources tend to be located in close proximity to populations. As such, components of SOCMI sources have already been subject to various Federal, State, and local air pollution control rules. However, the existing rules, even when considered together, do not comprehensively regulate emissions of all the organic HAP's emitted from all the emission points at both new and existing sources.

The HON, as proposed today, reflects the EPA's regulatory experience from previous NESHAP and NSPS rulemakings involving similar kinds of sources and emission points. Information on control technology applicability, performance, and costs was developed to support these NESHAP and NSPS. This information was carefully reconsidered in light of the 1990 amendments to the Act and used in the selection of MACT and the other provisions of the proposed rule, such as monitoring, recordkeeping, and reporting requirements.

The EPA has promulgated NSPS for SOCMI air oxidation and distillation process vents, SOCMI equipment leaks, petroleum refinery equipment leaks, and VOC emissions from volatile organic liquid storage vessels. The EPA has also promulgated NESHAP for benzene transfer operations, storage vessels, and waste operations, and benzene equipment leaks. The vinyl chloride NESHAP establishes standards for emission points at vinyl chloride and ethylene dichloride production processes.

Although these existing rules will remain in effect, the HON would provide comprehensive coverage of the SOCMI by regulating the organic HAP emissions from five kinds of emission points at each affected SOCMI source.

B. Overview of the Proposed Rule

This section of the notice provides an overview of the proposed rule. A more detailed summary of the proposed rule is provided in section III and the rationale for the provisions in the proposed rule is provided in sections VI through VIII.

The proposed rule comprises three subparts to be included in 40 CFR part 63. Subpart F provides the applicability criteria and general compliance requirements for the rule. Subparts G and H provide the control, monitoring, recordkeeping, and reporting requirements for the five kinds of emission points.

1. Subpart F: Applicability of the HON

The HON would regulate certain components of new and existing major sources, as defined by section 112(a) of the Act, for the SOCMI and seven non-SOCMI processes.

To define the SOCMI source category, subpart F includes a list of organic HAP's and a list of 396 synthetic organic chemicals produced by the SOCMI as commercial products. The "chemical manufacturing processes" used to produce these 396 chemicals can, but do not always, result in organic HAP emissions depending on whether HAP's are used or produced. Only those processes that use as a reactant or produce as a product, by-product, or co-product one or more organic HAP's would be subject to the proposed rule.

As proposed, subpart F defines "source" for the SOCMI source category as the set of process vents, storage vessels, transfer racks, wastewater streams, and equipment leaks in the organic HAP-emitting chemical manufacturing processes that are subject to the HON. To be subject to the HON, a chemical manufacturing process must be used to produce one or more of the 396 SOCMI chemicals listed in subpart F, and have an organic HAP as either:

(1) A product, by-product, co-product, or intermediate; or

(2) A reactant.

To be part of the same source, chemical manufacturing processes that are subject to the HON must also be located within a contiguous plant site under common control.

Subpart G would apply to the following kinds of emission points in SOCMI chemical manufacturing processes: process vents, wastewater operations, storage vessels, and transfer operations.

Subpart H would apply to the equipment leaks in SOCMI and seven non-SOCMI chemical manufacturing processes. The following non-SOCMI equipment leak processes are subject to subpart H: Styrene/butadiene rubber production; polybutadiene production; chlorine production; pesticide production; chlorinated hydrocarbon use; pharmaceutical production; and miscellaneous butadiene use.

2. Subpart G: Provisions for Process Vents, Wastewater, Storage Vessels and Transfer Operations

Subpart G of the proposed rule would require the owner or operator of a source to limit source-wide emissions of HAP's. Subpart G provides specific instructions for determining how much emission reduction must be achieved at each source. The required emission reduction is determined by how much emissions would be reduced if a "reference control technology" were applied to each "Group 1" emission point in the source.

The proposed rule specifies the reference control technology for each kind of point. Group 1 points are those points that meet the applicability criteria included in the control requirements for the proposed rule. The reference control technologies and the characteristics of Group 1 points are specified in subpart G of the proposed rule.

The owner or operator of a source can use two methods to comply with the emission reduction requirement. Either method can be used exclusively, or the two can be combined.

The first method is to apply the reference control technology, or an equivalent technology, to Group 1 emission points; thereby achieving some part of the required emission reduction at each Group 1 point that is controlled.

The second method is to average emissions from two or more emission points such that the overall required emission reduction is achieved. With the second method, emissions averaging, the owner or operator does not have to apply the reference control technology to each Group 1 point as long as an equivalent or greater emissions reduction is achieved elsewhere in the source.

Although equipment leaks are included in the definition of source for the SOCMI source category, equipment leaks cannot be included in the emissions averages because: (1) The equipment leaks standard has no fixed performance level; and (2) no method currently exists for determining the magnitude of allowable emissions to assign equipment leaks for purposes of emissions averaging. When this methodology is developed, EPA will consider allowing equipment leak emissions to be included in emissions averages.

3. Subpart H: Provisions for Equipment Leaks

The provisions in subpart H of the proposed rule were developed using regulatory negotiation and represent an extension of existing equipment leak control procedures and techniques to the processes regulated by today's proposal.

Subpart H proposes work practice requirements to reduce emissions from equipment leaks for equipment in volatile HAP service for 300 or more hours per year. To be in volatile HAP service is to be in contact with or containing process fluid that contains total 5 percent or more total HAP.

The following types of equipment are subject to Subpart H: valves, pumps, connectors, compressors, pressure relief devices, open-ended lines, sampling connection systems, instrumentation systems, agitators, product accumulator vessels, and closed-vent systems and control devices.

C. Legal Framework

This section provides a brief history of section 112 of the Act and background regarding the definition of source categories and source for section 112 standards. This information is included to give the reader a sense of the statutory, judicial, and Congressional guidance that the Administrator took into consideration in developing the source category and source definitions for the HON.

1. Statutory Background

Prior to the 1990 Amendments, section 112 of the Act required the Administrator to list air pollutants for which he intended to establish NESHAP. Then, within 180 days of such listing, the Administrator was required to propose regulations for each listed pollutant. He was also required to issue final regulations within another 180 days. Thus, once the Administrator added a pollutant to the section 112 list, a final NESHAP for that pollutant had to be issued within 1 year. The statute itself did not contain a list of pollutants.

Section 112 also provided that the Administrator must establish NESHAP at the level which "in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant." Section 112(b)(1)(B). As a result of this language, EPA conducted risk assessments to determine which pollutants should be regulated and to what level. Because of the substantial length of time required to complete a risk assessment study, EPA generally did not list an air pollutant until the proposed regulations were well underway.

In 1987, the legal framework for setting NESHAP was further defined when the D.C. Circuit handed down an *en banc* decision in *Natural Resources Defense Council, Inc., versus EPA*, 824 F.2d 1146 (D.C. Cir. 1987), (hereafter referred to as *Vinyl Chloride*). In that decision, the court set out a two-step process for EPA to follow in setting standards: (1) Determine a "safe" or "acceptable" risk level, and (2) set the standard at the level—which may be lower but not higher than the "safe" or "acceptable" level—that protects public health with an ample margin of safety. Following the 1987 *Vinyl Chloride* decision, the EPA promulgated NESHAP for several source categories of benzene and radionuclide emissions using the two-step process mandated by the court. A "safe" level was determined in each instance througn risk assessment, then a standard providing protection with an "ampie margin of safety" was set after consideration of factors such as cost and feasibility.

2. Current Statutory Requirements

The 1990 Amendments altered the preexisting scheme of section 112 fundamentally. Instead of requiring the EPA to determine which air pollutants should be listed and regulated as HAP's, Congress provided a list of 189 HAP's in the statute itself and directed EPA to develop rules to control HAP emissions. The Act requires that the rules be established for categories of sources of the emissions, rather than being set by pollutant. In addition, the Act sets out specific criteria for establishing a minimum level of control, and criteria to be considered in evaluating control options more stringent than the minimum control level. For most of these rules, assessment and control of any remaining unacceptable health risk is to occur 8 years after they are promulgated. However, for the rules required to be promulgated in the first 2 years after enactment, EPA is not required to conduct this assessment until 9 years after promulgation.

Specifically, section 112(c), as amended, directs the Administrator to develop a list of all categories or subcategories of major and area sources, as defined in section 112(a), emitting significant amounts of the HAP's listed in section 112(b). Section 112(d) directs the Administrator to promulgate emission standards for each listed category or subcategory of HAP sources. Such standards will be applicable to both new and existing sources and shall require:

> * * * the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new and existing sources in the category or subcategory to which such emission standard applies * * *
>
> 42 U.S.C. 7412(d)(2).

The Amendments further provide that "the maximum degree of reduction in emissions that is deemed achievable" shall be subject to a "floor" which is determined differently for new and existing sources. For new sources the standards set shall not be any less stringent than "the emission control that is achieved in practice by the best controlled similar source." For existing sources, the standards may not be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in each category or subcategory of 30 or more sources. (Smaller categories or subcategories are limited to the average of the best five performing sources in the category or subcategory.)

3. The Definition of Source Category and Source

The definition of source is an important element of Section 112 standards because it describes the emission points to which each standard applies. The definition of source is fundamental to the determination of the MACT floor and the evaluation of regulatory options more stringent than the floor. This section describes some of the factors that the Administrator took into consideration in selecting the definition of source for the SOCMI source category.

Section 112(c) directs the Administrator to create a list of source categories for MACT standards such that "[t]o the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and Part C." As is clear from a review of those existing lists, the categories listed are generally broadly drawn. For example, the Part C list includes fossil-fuel fired steam electric plants of more than 250,000,000 Btu/hr heat input, iron and steel mill plants, petroleum refineries and chemical process plants and the section 111 list includes petroleum manufacturing and marketing, plywood manufacture, glass and crude oil and natural gas production. Listing the SOCMI as a category on the section 112(c) list (57 FR 31576, July 16, 1992) is consistent with the general broad categorization of the section 111 and part C lists.

Section 112(d) directs the Administrator to set standards for all "major sources" within every listed category. Area sources meeting the requirements of sections 112(c)(3) or 112(k) must also be regulated. Major sources are "stationary sources," or groups of stationary sources, of a given size, as defined in section 112(a)(1). The definition of "stationary source" included in section 112 is identical to the definition used in section 111(a) which is "any building, structure, facility, or installation which emits or may emit any air pollutant." 42 U.S.C. 7411(a). However, section 112 as amended does not require that the standards set under section 112(d) be set for the same components of the categories as was done under section 111. Thus, there is no requirement that section 112(d) standards for sources in the SOCMI be set for precisely the same portions of the industry as NSPS.

As the Supreme Court has recognized in *Chevron, USA, Inc.*, v. *Natural Resources Defense Council*, 467 U.S. 837 (1984) (hereafter referred to as *Chevron*), EPA has broad discretion to define "source." The Court recognized in *Chevron* that if any Congressional intent can be discerned from the statutory language of section 111(a)(3) (the definition of source that is used in section 112), "the listing of overlapping, illustrative terms was intended to enlarge, rather than confine, the scope of the EPA's power to regulate particular sources in order to best effectuate the policies of the Act." *Chevron*. Thus, the court found that a "source" can encompass "any discrete, but integrated operation, which pollutes." *Chevron*. As such, it could also encompass an entire plant and EPA has flexibility, within the broad definition of "stationary source," to define the source for each section 112(d) standard as broadly or narrowly as is appropriate for the particular industry being regulated.

For the HON, EPA is proposing to define "source" for the SOCMI source category as the process vents, storage vessels, transfer racks, wastewater collection and treatment operations, and equipment leaks in the organic HAP emitting chemical manufacturing processes that are located in a single facility covering a contiguous area under common control. With this definition of source, all SOCMI plant sites that are major sources under section 112, approximately 350, will be subject to the standard.

One of the implications of the definition of source proposed for the SOCMI source category is that a single "floor," as defined in section 112(d)(3), is applicable to the entire SOCMI operation regulated by the HON. Thus, in setting MACT for the SOCMI, EPA had to first determine the floor for new and existing SOCMI sources. To determine the floor for existing sources, EPA assessed the average emission limitation achieved by the best performing 12 percent of existing SOCMI sources. To determine the floor for new sources, EPA assessed the emissions limitations achieved by the best performing existing source in the source category. The EPA then evaluated the costs and non-air quality impacts of control before arriving at new and existing standards at least as stringent as the new and existing floors for the SOCMI source category.

4. Authority for Emissions Averaging

Under Section 112, the Administrator has legal authority to permit affected sources to comply with the standard through emissions averaging. Section 112(d) provides that standards are to be established for each category or subcategory of sources listed by the Administrator, and that such standards shall be applicable to sources within those categories or subcategories. The statute does not define source category, nor, as explained above, does it impose precise limits on how the Administrator may define source. Thus, the Administrator has the discretion to define the source category and the source either narrowly or broadly. In this case, the Administrator is proposing to exercise that discretion to define source broadly to include all the emission points relating to SOCMI production.

In setting the standard, the Administrator is required to determine a floor for the entire category or subcategory, and then set a standard applicable to each source within that category that is at least as stringent as the floor. In determining whether the standard should be more stringent than the floor and by how much, the Administrator is to consider, among other things, the cost of achieving such additional reductions. The statutory provisions do not limit how the standard is to be set beyond requiring that it be applicable to all sources in a category and be at least as stringent as the floor. Therefore, the relevant statutory language does not prohibit EPA from allowing a source to meet MACT through use of emissions averaging as long as every source in the category is required to comply, averaging does not cross source boundaries, and the standard is set at a level at least as stringent as the floor. As further discussed in section VII.F of this notice, the EPA is seeking comment on a complementary legal interpretation of sections 112(d) and 112(i) of the Act.

In addition, it should be noted that Congress explicitly provided that cost should be considered in setting the standard. Emissions averaging is a means of achieving the reductions required by the standard in a cost effective way, and is thus clearly in line with Congressional intent.

D. Policy Goals

The SOCMI component of the HON is expected to result in the greatest emissions reduction likely to be achieved by any single source category being regulated under section 112. As such, regulating this industry represents a significant first step toward fulfilling the mandate of section 112 to reduce emissions of HAP's. In addition, SOCMI facilities, or sources, tend to be large individual emitters of HAP's, which are generally thought to pose potential health hazards at the local level.

The EPA recognizes that the HAP's covered by the HON represent a wide range of toxicities, a variety of potential toxic effects, and a variety of exposure levels. The EPA also recognizes clear public interest in reducing HAP emissions from the SOCMI as much as is achievable, based upon the potential for health and environmental benefits from HAP emission reductions of this magnitude.

Aside from the general goal of maximum achievable emissions reduction, the EPA has endeavored to structure the proposed rule to incorporate several other goals: overall administrative simplicity, allowing flexibility in implementation in order to reduce costs, encouraging pollution prevention, and ensuring enforceability. Some goals such as flexibility and encouraging pollution prevention reinforce each other, while other goals such as flexibility and enforceability may seem contradictory. The EPA has striven to find a workable balance among the potentially contradictory goals, and is requesting comment on the proposed solutions in this notice.

E. Major Policy Decisions

This section provides a discussion of the major policy decisions that provide the framework for this rule, and the context in which those decisions were reached.

1. The Definition of Source

For the SOCMI source category, "source" is defined as the set of emission points in the organic HAP-emitting processes used to produce synthetic organic chemicals that are in a contiguous area under common control.

The Administrator carefully considered the previously described statutory requirements, legal history, and Congressional intent in selecting the definition of source for the SOCMI source category. In addition, the Administrator considered the technical concerns regarding implementation and enforcement of the rule. Specifically, the Administrator wanted to select a definition of source that would provide flexibility in compliance with the rule, while maintaining enforceability. Thus, the principal rationale for adopting this definition of source is to allow flexibility in compliance, specifically to facilitate use of emissions averaging as a means of compliance with the rule.

The Administrator considered this flexibility for compliance important because of the diversity among SOCMI facilities. Although the rule being proposed today sets national standards, it is based on a model analysis because data on all the plant configurations in this industry are not available. While this model analysis may reflect the characteristics of the industry as whole, it does not account for unique operational scenarios at individual sources. Emissions averaging allows the owners or operators of SOCMI sources to seek the least costly way for their individual sources to meet the allowable emissions level in this Federal rule.

2. The Floor

In setting MACT standards, the EPA must establish the floor for a source category because the Act specifies that each standard be at least as stringent as the floor for the relevant source category. However, EPA did not have sourcewide data to determine the floor for the source as defined for the SOCMI source category. As a result, EPA examined available data on each kind of emission point included in the source to determine the emission reductions achieved by the best-performing 12 percent of each for existing sources; and, for new sources, the best-controlled similar emission point.

Existing Federal and State regulations were used to determine current control levels on the emission points regulated by subpart G of the HON. This approach was necessary because of the difficulty of conducting a costly and time-consuming data collection effort in the time allocated for developing the rule. The EPA does not believe the results from this approach are significantly different from what they would be if source-specific data had been collected. Using this process to establish a floor for the emission points regulated by subpart G ensures that the control level of the standard will be equivalent to the emission control level for the best-controlled 12 percent of SOCMI facilities.

For subpart H, the negotiating committee agreed that the requirements of the negotiated rule constitute MACT for equipment leaks. Further rationale for the negotiated regulation for equipment leaks is given in section VIII of this preamble.

3. The Control Requirements

Once the floor level of control was established, EPA considered the options for control requirements more stringent than the floor. As previously noted, the Act specifies that EPA must choose control requirements as stringent as, or more stringent than, the floor level of control. As required by the statute, when considering control requirements beyond the floor, EPA considered the relative cost of achieving different levels of emissions reductions, non-air quality health and environmental impacts, and the energy requirements of the controls. While non-air quality health and environmental impacts have not been quantified for this proposed rulemaking, the control levels proposed in this rule reflect a recognition of the large magnitude of emissions that can be controlled at relatively reasonable costs on a national level, and the magnitude and variety of HAP's emitted from large individual sources. The Administrator believes that the proposed rule represents the maximum degree of emissions reductions achievable with reasonably cost-effective controls for most kinds of equipment covered by this rulemaking, given the large size of most major sources, as well as the magnitude and variety of their emissions.

4. The Form of the Standard

The proposed HON establishes a control requirement for each kind of emission point regulated by subparts G and H. To facilitate emissions averaging, the Administrator chose to have the subpart G standard also establish an overall allowable emissions level for the source as a whole. The allowable emissions would be equal to the sum of the emissions from each point in the source, excluding equipment leaks, if the required controls were applied. As such, the allowable emissions level is set for a given mix of emission points, and the allowable emissions will change as the number or kind of emission points in the source changes.

Though the form of the standard is an allowable emissions level, compliance can be determined on a point-by-point basis for emission points not included in emissions averages. Point-by-point compliance is determined based on the types of controls in place on individual emission points, their performance, and their operating conditions.

5. Emissions Averaging

With emissions averaging, if an owner or operator does not wish to control a particular emission point, the uncontrolled emissions from that point can be offset by emissions below what is required by subpart G at one or more other points. Although subpart G allows for extensive use of emissions averaging, it is expected that it will only be used for a limited number of emission points at any one source.

Section III.B.6 provides a more detailed discussion of how emissions averaging is designed to work and section VII.F provides a detailed discussion of the issues considered by the EPA in the process of developing the emissions averaging policy. In section VII.F, the EPA seeks comment on numerous aspects of the emissions averaging policy included in the proposed rule.

III. Summary of Proposed Rule

This section of the notice summarizes the proposed rule. For an explanation of the process used to select these requirements and the rationale for specific provisions, see sections VI, VII, and VIII.

The proposed rule consists of three subparts in 40 CFR part 63. Subpart F provides the applicability criteria for the rule, requires that owners and operators of SOCMI sources comply with Subparts G and H, and specifies general recordkeeping and reporting requirements. Subparts G and H provide the specific control, monitoring, reporting, and recordkeeping requirements for the respective kinds of emission points.

A. Summary of Subpart F

Subpart F lists the HAP's regulated by this rule, specifies what is included in the SOCMI source category, and details the seven non-SOCMI processes that are also subject to subpart H. In addition, subpart F presents definitions and general information on compliance, reporting, and recordkeeping requirements that are applicable for sources subject to subpart G or H.

1. Regulated Pollutants

Subpart F lists 112 organic HAP's that EPA has determined may be emitted from SOCMI processes because they are either produced as a product or used as a reactant. The emissions of these 112 organic chemicals are regulated by subparts F and G. In addition to these 112 organic HAP's, 37 other organic HAP's are regulated by subparts F and H. The complete list of 149 organic HAP's is presented in subpart H.

2. Definition of Source Category and Source

Sources in the SOCMI source category and seven non-SOCMI processes would be subject to the proposed rule.

To define the SOCMI source category for purposes of the HON, subpart F lists 396 chemicals considered SOCMI products. The EPA has determined that the production of these chemicals may result in organic HAP emissions. As a result, chemical manufacturing processes used to produce one of these 396 SOCMI chemicals as a product are in the SOCMI source category. These processes would make up the SOCMI sources that would be subject to subparts F, G, and H of this rule. If a process produces one of the 396 listed chemicals but does not use a HAP as a reactant or produce a HAP as a product, by-product, or co-product, it would not be subject to this proposed rule.

For the SOCMI source category, a source comprises all the SOCMI chemical manufacturing processes that are subject to the rule and located at one contiguous geographic site under common control. Subpart F defines the SOCMI source as the collection of process vents, storage vessels, transfer racks, wastewater streams (and associated residuals), and equipment leaks in the relevant chemical manufacturing processes. As listed above, the first four of the five kinds of emission points in a SOCMI source would be subject to subparts F and G. However, SOCMI equipment leaks will be subject to subparts F and H. As such, a SOCMI source is subject to all three of the HON's subparts.

In contrast to the sources in the SOCMI source category, sources in the seven non-SOCMI processes would be covered by subparts F and H only. For these processes, the source would include only equipment leaks. As explained in the draft schedule for the promulgation of emission standards (57 FR 44147), EPA is considering regulating the other kinds of emission points in these seven processes in future section 112 standards. The seven processes subject to subpart H of the HON are included in 20 different source categories or subsets of source categories. The exact relationship of the HON's seven equipment leak processes to the source categories listed for section 112 standards is specified in Table 1 of the draft schedule for the promulgation of emission standards.

3. Other Provisions

The proposed subpart F establishes the compliance dates for new and existing sources and requires the source be properly operated and maintained at all times. As part of proper operation and maintenance provisions, sources are required to include procedures for managing wastewaters generated during maintenance turnarounds and emptying and purging of equipment during routine maintenance in the startup, shutdown, and malfunction plan. Monitoring of cooling water is also required to detect leaks in heat exchange equipment. If a leak is detected, the heat exchanger must be repaired.

Procedures for obtaining permission to use an alternative means of emission reduction are included in the proposed subpart F. The applicability of the General Provisions in subpart A to sources subject to subparts F, G, and H is clarified. General performance test requirements are specified, including the provision that performance tests be conducted under representative operating conditions. The General Reporting and Recordkeeping Provisions of the proposed subpart F include the requirement that required records and reports must be maintained for 5 years, and specify where reports must be sent.

B. Summary of Subpart G

1. Overview

The proposed subpart G requires that organic HAP emissions be limited to the level that could be achieved by application of a reference control technology to each Group 1 emission point in the source. Although controls are not required for Group 2 emission points, both Group 1 emission points and Group 2 emission points are included in the equation defining the source's allowable emissions level. However, emission points associated with equipment that is no longer operational are not to be included in the calculation of the allowable emissions because these points are not subject to this proposed rule.

Though subpart G is structured as an allowable emissions level, EPA does not anticipate that any owner or operator would actually calculate emissions estimates for every emission point at the source in order to comply with the HON. Actual emissions estimates would be required, by the HON, for only those emission points that are included in emissions averages.

The owner or operator can utilize two methods to demonstrate compliance with the HON. The first method is application of the reference control technologies to achieve the required level of emission reduction at Group 1 emission points. This compliance approach is described in sections 2 through 5 below. The second compliance approach is emissions averaging. Emissions averaging is described in section 6 below. Section 7 describes the HON's recordkeeping and reporting provisions.

2. Process Vent Provisions

A process vent means a gas stream that is continuously discharged during the operation of the unit from an air oxidation process unit, reactor process unit, or distillation operation within a SOCMI chemical manufacturing process. Process vents include gas streams that are discharged directly to the atmosphere and gas streams discharged to the atmosphere after diversion through a product recovery device. The proposed rule would apply only to process vents that are associated with continuous (nonbatch) processes and emit vent streams containing more than 0.005 weight-percent HAP. The process vent provisions do not apply to vents from control devices installed to comply with the wastewater provisions of subpart G. (Air emissions from control devices installed to remove HAP's from the wastewater streams are required by the wastewater provisions to be ducted to a 95-percent efficient air emissions control device.) Process vents exclude relief valve discharges and leaks from equipment regulated under subpart H, but include vents from product accumulator vessels. Vents from product accumulator vessels that are complying with the process vent provisions of subpart G are not subject to the equipment leak provisions in subpart H.

The proposed process vent provisions require the owner or operator to calculate a TRE index value to determine whether each process vent is a Group 1 or Group 2 vent, except that the owner or operator can elect to comply with the control requirements without calculating the TRE index. The TRE index value is determined after the last recovery device in the process or prior to venting to the atmosphere. The TRE calculation involves an emissions test or engineering assessment and use of the TRE equations in the proposed regulation. Process vents with a TRE index equal to or less than 1.0 would be Group 1 vents and must be controlled to the level of the reference control technology, 98 percent HAP reduction or a reduction to 20 ppmv of HAP, using control devices. The proposed rule encourages use of recovery devices for additional product recovery because an owner or operator of a Group 1 process vent may add product recovery devices or otherwise reduce emissions to the extent that the TRE becomes greater than 1.0 and the Group 1 vent becomes a Group 2 vent. No additional control is required for Group 2 process vents but the TRE must be maintained above 1.0. Performance test provisions are included for Group 1 process vents to verify that the control device achieves the required performance.

Halogenated streams which use a combustion device to comply with 98 percent or 20 ppmv HAP emission reduction must vent the emissions from the combustor to an acid gas scrubber prior to venting to the atmosphere. The scrubber must reduce the overall emissions of hydrogen halides and halogens by 99 percent or reduce the outlet concentration of each individual hydrogen halide or halogen to 0.5 mg/dscm or less. Monitoring, reporting, and recordkeeping provisions necessary to demonstrate compliance are also included in the proposed process vent provisions.

3. Storage Vessel Provisions

A storage vessel means a tank or other vessel storing the feed or product for a SOCMI chemical manufacturing process if the liquid is on the list of organic HAP's in subpart F. The storage vessel provisions do not apply to the following: (1) Vessels permanently attached to motor vehicles, (2) pressure vessels designed to operate in excess of 204.9 kPa (29.7 psia), (3) vessels with capacities smaller than 38 m^3 (10,000 gal), (4) product accumulator vessels, (5) wastewater tanks, and (6) vessels storing liquids that contain organic HAP's only as impurities. An impurity is produced coincidentally with another chemical substance and is processed, used, or distributed with it.

The proposed storage provisions require that one of the following control systems be applied to Group 1 storage vessels: (1) An internal floating roof with proper seals and fittings, (2) an external floating roof with proper seals and fittings, (3) an external floating roof converted to an internal floating roof with proper seals and fittings, or (4) a closed vent system with a 95-percent efficient control device. The storage provisions give details on the types of seals and fittings allowed. Monitoring and compliance provisions include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections. If a control device is used, the owner or operator must establish appropriate monitoring procedures. Reports and records of inspections, repairs, and other information necessary to determine compliance are also required by the proposed storage provisions. No controls are required for Group 2 storage vessels.

4. Transfer Operations Provisions

Transfer operations are defined as the loading of liquid products that are on the list of organic HAP's in subpart F from a transfer rack within a SOCMI chemical manufacturing process into a tank truck or railcar. Transfer rack means the total of loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to load tank trucks or railcars. The transfer provisions do not apply to the loading of liquid organic HAP's at an operating pressure in excess of 204.9 kPa (29.7 psia); loading of marine vessels; racks loading liquids that contain organic HAP's only as impurities; or racks loading liquid organic HAP's if emissions are returned to a storage vessel in a vapor balancing system.

The proposed transfer provisions require control of Group 1 transfer racks to achieve 98 percent organic HAP reduction or an outlet concentration of 20 ppmv. Combustion devices or product recovery devices may be used to comply with this requirement. Alternatively, vapor balancing systems may be used.

The transfer provisions include design specifications for vapor collection systems. Specifically, vapor collection systems are required to route the organic vapors to a control device or to a vapor balancing system and are required to operate without detectable emissions. In addition, the proposed provisions require that liquid organic HAP's be loaded only into DOT certified vehicles or vehicles that have been determined to be vapor tight according to Method 27 of 40 CFR part 60, appendix A.

Halogenated streams which use a combustion device to comply with 98 percent or 20 ppmv HAP emission reduction must vent the emissions from the combustor to an acid gas scrubber prior to venting to the atmosphere. The scrubber must reduce the overall emissions of hydrogen halides and halogens by 99 percent or reduce the outlet concentration of each individual hydrogen halide or halogen to 0.5 mg/dscm or less.

Initial performance tests of control device efficiency are required, and monitoring, reporting, and recordkeeping provisions are specified. Controls are not required for Group 2 racks.

5. Wastewater Provisions

The wastewater streams to which the proposed standard applies are any organic HAP-containing water or process fluid discharged into an individual drain system and includes process wastewater, maintenance-turnaround wastewater, and routine maintenance wastewater. These provisions also apply to organic HAP-containing materials (i.e., residuals) separated from wastewater. The characteristics of the process wastewater stream (e.g., flow rate, VOHAP concentration) are determined for the point of generation. Examples of a process wastewater stream include, but are not limited to, wastewater streams from process equipment, product or feed tank drawdown, cooling tower blowdown, steam trap condensate, reflux, and fluids drained into and material recovered from waste management units. Examples of maintenance-turnaround wastewater streams are those generated by descaling of heat exchanger tubing bundles, cleaning of distillation column traps, and draining of pumps into an individual drain system. For purposes of the proposed standard, an organic HAP-containing wastewater stream is any wastewater stream that has a HAP concentration of 5 ppmw or greater and a flow rate of 0.02 *l* pm or greater.

The proposed process wastewater provisions include detailed flow charts to assist in determining applicability and control requirements. Controls must be applied to Group 1 wastewater streams, unless the source complies with the source-wide mass flow rate provisions of sections 63.132(c)(5) through (c)(7) of subpart G or if the Group 1 stream is returned to a process. Controls are not required for Group 2 wastewater streams.

The proposed process wastewater provisions include equipment and work practice provisions for the transport and handling of wastewater streams between the point of generation and the wastewater treatment processes. These provisions include use of covers and enclosures and closed vent systems to route organic HAP vapors from the transport and handling equipment. The proposed provisions also include requirements for reduction of VOHAP concentration in wastewater streams. The required removal efficiencies are based on steam stripping. A variety of formats (e.g., percent reduction, effluent concentration, mass removal) are proposed to provide flexibility as described in section VII.E of this notice. Finally, air emissions routed through closed-vent systems from covers, enclosures, and treatment processes must be reduced by 95 percent or to a level of 20 ppmv. This reduction could be achieved using a combustion or recovery device. For demonstrating compliance with the various requirements, owners or operators have a choice of conducting performance tests or documenting engineering calculations. Appropriate compliance, monitoring, reporting, and recordkeeping provisions are included in the regulation.

6. Emissions Averaging

Under the proposed subpart G, owners or operators may seek approval to comply by emissions averaging with any process vents, storage vessels, transfer racks, or wastewater streams. Equipment leaks are regulated under a separate subpart and may not be included in an emissions average at this time.

a. *Credit/debit system.* To utilize emissions averaging under the proposed rule, the owner or operator must identify all the emission points that would be included in an average and estimate their allowable and actual emissions. The EPA has established a control efficiency, or percent emissions reduction, for the reference control technology for each kind of emission point. The owner or operator would use these reference control technologies to estimate the allowable emissions for each emission point.

For each Group 1 point, the allowable emissions level is the residual emissions after application of a reference control technology. As a result, all Group 1 emission points that are not being controlled with the reference control technology or an equivalent are emitting more than their allowable emissions. These points are generating emission "debits." Emission debits are calculated by subtracting the amount of emissions allowed by the standard for a given emission point from the amount of actual emissions for that point.

If a Group 1 emission point is controlled by a device or a pollution prevention measure that does not achieve the control level of the reference control technology, the amount of emission debits will be based on the difference between the actual control level being achieved and what the reference control would have achieved. For example, if a pollution prevention measure that achieves a 70 percent reduction in emissions is used on a Group 1 wastewater operation, and the reference control would have achieved 98 percent emissions reduction on that emission point, then the debit would be equal to the difference, 28 percent of the uncontrolled emissions.

The owner or operator must control other emission points to a level more stringent than what is required for that kind of point to generate emission "credits." Emission credits are calculated by subtracting the amount of emissions that actually exist for a given emission point from the amount of emissions that would be allowed under subpart G, and then possibly applying a discount factor. The EPA is soliciting comments on use of a discount factor for emissions credits, and is proposing a range from 0 to 20 percent. To be in compliance, the owner or operator must be able to show that the source's emission credits were greater than or equal to its emission debits.

Credits may come from:

(1) Control of Group 1 emission points using technologies that EPA has rated as being more effective than the appropriate reference control technology;

(2) Control of Group 2 emission points; and

(3) Pollution prevention projects that result in control levels more stringent than what the standard requires for the relevant point or points.

With the exception of some storage vessels and process vents, use of the reference control technology at a level more stringent than its assigned efficiency would not generate credits. If EPA cannot or has not determined the control efficiency of a control technology or work practice, it cannot be used to generate credits. The EPA will assign control efficiencies to new control devices or practices upon request.

Specific restrictions on what can be counted as a credit are discussed in section VII.F of this preamble. Equations for calculating debits and credits are provided in section 63.150 of the proposed subpart G.

b. *Compliance.* The proposed rule requires that emission averaging plans be reviewed as part of a source's Implementation Plan or operating permit application. The controls in the averaging plan would be cited in a source's Implementation Plan or operating permit. Thus, to show compliance using emissions averaging, the owner or operator must prove both:

(1) The appropriate controls have been applied and maintained; and

(2) That the amount of emission credits and debits meet certain quarterly and annual requirements.

7. Recordkeeping and Reporting

The proposed rule requires sources complying with subpart G to keep records and submit reports of information necessary to document compliance. Records must be kept for 5 years. The following five types of reports must be submitted to the Administrator: (1) Initial Notification, (2) Implementation Plan (if an operating permit application has not been submitted), (3) Notification of Compliance Status, (4) Periodic Reports, and (5) other reports. The requirements for each of the five types of reports are summarized below.

a. *Initial Notification.* The Initial Notification is due 120 days after the date of promulgation for existing sources. For new sources, it is due 180 days before commencement of construction or reconstruction, or 45 days after promulgation of subpart G, whichever is later. The notification must list the chemical manufacturing processes that are subject to subpart G, and which provisions may apply (e.g., process vents, transfer operations, storage vessels, and/or wastewater provisions). A detailed identification of emission points is not necessary for the Initial Notification. However, the notification must include a statement of whether the source expects that it can achieve compliance by the specified compliance date.

b. *Implementation Plan.* The Implementation Plan details how the source plans to comply with subpart G. An Implementation Plan would be required only for sources that have not yet submitted an operating permit application.

Existing sources must submit the Implementation Plan at different times for emission points included in averages and emission points not included in averages. The Implementation Plan for emission points included in the average would be due 18 months prior to the date of compliance. The Implementation Plan for emission points not included in an emissions average would be due 12 months prior to the date of compliance. For new sources, Implementation Plans would be submitted with the Notification of Compliance Status.

The information in the Implementation Plan should be incorporated into the source's operating permit application. The terms and conditions of the plan, as approved by the permit authority, would then be incorporated into the operating permit.

For points included in emissions averaging, the Implementation Plan would include: An identification of all points in the average and whether they are Group 1 or Group 2 points; the specific control technique or pollution prevention measure that will be applied to each point; the control efficiency for each control used in the average; the projected credit or debit generated by each point; and the overall expected credits and debits. The plan must also certify that the same types of testing, monitoring, reporting, and recordkeeping that are required by the proposed rules for Group 1 points will be done for all points (both Group 1 and Group 2) included in an emissions average. If a source requests approval to monitor a unique parameter or use a unique recordkeeping and reporting system, a rationale must be included in the Implementation Plan.

For emission points not included in an average, the Implementation Plan would include a list of emission points subject to the process vents, storage vessels, transfer operations, and wastewater provisions and whether each point is Group 1 or Group 2. The control technology or method of compliance planned for each Group 1 point must be specified. The plan must also certify that appropriate testing, monitoring, reporting, and recordkeeping will be done for each Group 1 point. If a source requests approval to monitor a unique parameter, a rationale must be included.

c. *Notification of Compliance Status.* The Notification of Compliance Status would be submitted 150 days after the source's compliance date. It contains the information for Group 1 points and for all points in emissions averages, necessary to demonstrate that compliance has been achieved, such as: The results of any performance tests for process vents, transfer operations, and wastewater emission points; one complete test report for each test method used for a particular kind of emission point; TRE determinations for process vents; design analyses for storage vessels and wastewater emission points; site-specific ranges for each monitored parameter for each emission point and the rationale for the range; and values of all parameters used to calculate emission credits and debits for emissions averaging.

d. *Periodic Reports.* Generally, Periodic Reports would be submitted semiannually. However, there are two exceptions. Quarterly reports must be submitted for all points included in an emissions average. In addition, if monitoring results show that the parameter values for an emission point are outside the established range for more than 1 percent of the operating time in a reporting period, or the monitoring system is out of service for more than 5 percent of the time, the regulatory authority may request that the owner or operator submit quarterly reports for that emission point. After 1 year, semiannual reporting can be resumed, unless the regulatory authority requests continuation of quarterly reports.

All Periodic Reports would include information required to be reported under the recordkeeping and reporting provisions for each emission point. For emission points involved in emissions averages, the report would include the results of the calculations of credits and debits for each month and for the quarter. For continuously monitored parameters, the data on those periods when the parameters are outside their established ranges are included in the reports. Periodic Reports would also include results of any performance tests conducted during the reporting period and instances when required inspections revealed problems. Additional information the source is required to report under its operating permit or Implementation Plan would also be described in Periodic Reports.

e. *Other reports.* Other reports would be submitted as required by the provisions for each kind of point. Other reports include: Reports of startup, shutdown, and malfunction; process changes that change the compliance status of process vents; and requests for extensions of repair and notifications of inspections for storage vessels and wastewater.

C. Summary of Subpart H

The following is a general summary of the requirements and concepts of the negotiated regulation. The reader is referred to the proposed standard for detail of specific provisions.

1. Applicability

The standards would apply to equipment in VHAP service 300 or more hours per year associated with a production process manufacturing any of the 396 chemicals listed in the proposed standard that make or use as a reactant one of the organic VHAP's listed in § 63.183 of the regulation. They would also apply to equipment handling specific chemicals for a limited number of listed non-SOCMI processes. Petroleum refinery processes will not be covered by the proposed standard; a separate rulemaking will be conducted for those processes. [It should be noted that although refinery processes would not be affected by this standard, organic chemical manufacturing units (e.g., benzene units) located on refinery property would be affected.]

The equipment subject to the proposed standard includes valves, pumps, connectors, compressors, pressure relief devices, open-ended lines, sampling connection systems, instrumentation systems, agitators, product accumulator vessels, and closed-vent systems and control devices. "In VHAP service" means that equipment contains or contacts a fluid that is 5 percent or greater VHAP's.

The standards would also split the covered processes into five distinct groups to which the regulation would apply over time. The rule would apply to the first group 6 months after promulgation. Thereafter, the rule would become applicable to another group every 3 months until all the processes were covered.

a. *Pumps and valves*. The regulation is structured similarly for pumps and valves. Standards for both would be implemented in three phases and both standards have associated QIP's. The first and second phases for both types of equipment consist of an LDAR program, with lower leak definitions in the second phase. The LDAR program involves a periodic check for organic vapor leaks with a portable instrument; if leaks are found, they must be repaired within a certain period of time. In the third phase, the periodic monitoring (a work practice standard) would be coupled with a base performance level (i.e., allowable percent leaking components).

As part of the base program, pumps would require monthly monitoring using an instrument and weekly visual inspection. Valves would initially require quarterly monitoring, but the length of time between monitoring could be increased if the percent leaking valves demonstrate incrementally better performance, as specified in the rule, over the base performance level.

Special provisions apply to pumps in food/medical service, pumps in polymerizing monomer service, "leakless" pumps, and unsafe- and difficult-to-monitor valves. Plants with less than 250 valves in VHAP service are subject only to LDAR and not the base performance level.

If the base performance levels for a type of equipment are not achieved, based on a rolling average of monitoring results, owners or operators must, in the case of pumps, enter into a QIP, and in the case of valves may either enter into a QIP or implement monthly LDAR. The QIP is a concept that enables plants exceeding the base performance levels to eventually achieve the desired levels without incurring penalty or being in a noncompliance status. As long as the requirements of the QIP are met, the plant is in compliance. The basic QIP consists of information gathering, determining superior performing technologies, and replacing poorer performers with the superior technologies until the base performance levels are achieved.

b. *Connectors*. The rule also provides for performance standards for connectors in terms of percent leaking connectors in each process unit. The negotiated standard for connectors is not phased in, i.e., the performance level applies as soon as the rule is effective for the process unit. Consistent achievement of the base performance level would result in monitoring being required less frequently. Failure to achieve the base performance level would cause the plant to remain in an annual monitoring cycle.

Special provisions would apply to certain existing screwed connectors and to connectors that are inaccessible or unsafe to monitor or repair.

c. *Other equipment*. Standards for compressors, open-ended lines, pressure relief devices, sampling connection systems, and closed vent systems and control devices remain essentially unchanged from existing regulations (see 40 CFR part 61, subpart V). Agitators must meet LDAR requirements, but not base performance levels. Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service are subject to instrument monitoring only if evidence of a potential leak is found through sight, sound, or smell. Instrumentation systems consist of smaller pipes and tubing that carry samples of process fluids to be analyzed to determine process operating conditions.

2. Delay of Repair

Under certain conditions delay of repair beyond the required 15 days may be acceptable. Examples of these situations include where: (1) A piece of equipment cannot be repaired without a process unit shutdown, (2) equipment is taken out of VHAP service, (3) emissions from repair will exceed emissions from delay of repair until the next shutdown, (4) pumps with SMS are replaced with DMS, and (5) valves assembly supplies have been depleted from stocks.

3. Alternative Standards

Generally, an alternative means of emission limitation may be used if an owner or operator can demonstrate emission reductions equal to or better than that required by the standards. Specific alternative standards have been written for batch processes and enclosed buildings. Batch processes can choose either to meet similar standards to those for continuous processes, with monitoring frequency prorated to time in use of VHAP, or to periodically pressure test the entire system. Enclosed buildings may forego monitoring if the building is kept under a negative pressure and all emissions are routed through a closed vent system to an approved control device.

4. Test Methods and Procedures

The standards would retain the use of Method 21 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. A "leak" is a concentration specified in the regulation for the type of equipment being monitored and is based on the instrument response to methane (the calibration gas) in air. The observed screening value may require adjustment for response factor relative to methane if the weighted response factor of the stream exceeds a specified multiplier. Method 18 is to be used to determine organic content of a process stream. Test procedures using either a gas or a liquid for pressure testing the batch system are specified to detect for leaks.

5. Recordkeeping

The standards would require a readily accessible recordkeeping system. Records required include identification of equipment that would be covered by the standards, identification of equipment that is found to be leaking during a monitoring period and when it is repaired, testing associated with batch processes, design specifications of closed vent systems and control devices, test results from performance tests or testing process streams for organic content, and information required by equipment in QIP. Other recordkeeping requirements also apply, and the reader is referred to Section 63.181.

6. Reporting

Owners and operators would be required to submit an initial report that describes the source and all equipment subject to these standards. Every 6 months, a report must be submitted that summarizes the results of monitoring and performance tests conducted during that period, changes to the process unit, changes in monitoring frequency or monitoring alternatives, and/or initiation of a QIP. Reports can be submitted on electronic media that is compatible with the system used by the Administrator or the State permitting authority.

IV. SUMMARY OF IMPACTS OF PROPOSED RULE

This section presents the environmental, energy, cost, and economic impacts resulting from the control of HAP emissions under the proposed rule. It is estimated that approximately 370 sources and 1,050 chemical manufacturing processes would be required to apply controls by the proposed standards.

The analysis of impacts was performed assuming the requirements of the rule would be met through point-by-point compliance instead of emissions averaging. Under emissions averaging, the emission reductions would be approximately the same or greater, but presumably, since emission averaging is voluntary, the costs of control would be lower. It is not possible to quantify the potential cost savings from emissions averaging because the savings will depend on how many sources use emissions averaging and the mix of emission points and controls that are included in emissions averages. At this time, the EPA does not have the data necessary to estimate these parameters. The EPA requests comments on the potential savings from the proposed emissions averaging provisions.

Impacts are presented relative to a baseline set at the level of control in the absence of the proposed rule. The estimates include the impacts of applying control to: (1) Existing emission points and (2) additional emission points from SOCMI process units that are expected to begin operation over a 5-year period. Thus, the estimates represent annual impacts occurring in the fifth year. Assuming a SOCMI-wide growth rate of 3 percent each year over a 5-year period, national impacts for the emission points that will be added in the first 5 years of the rule are estimated to be 16 percent of total national impacts in the fifth year.

The environmental, energy, cost, and economic impacts are discussed in greater detail in the BID, Volumes 1A, 1B, and 1C. Specifically, the impacts estimation methodology is discussed in Volume 1A; the performance and costing methodologies of the evaluated control technologies are discussed in Volume 1B; and the sources of other environmental and energy impacts are discussed in Volume 1C.

A. Environmental Impacts

Environmental impacts include the reduction of HAP and VOC emissions, increases in other air pollutants, and decreases in water pollution and solid waste resulting from the proposed rule.

Under the proposed rule, it is estimated that emissions of HAP would be reduced by 475,000 Mg/yr (522,500 tons/yr) and the emissions of VOC's would be reduced by 986,000 Mg/yr (1,085,000 tons/yr) (see Table 1).

TABLE 1.—NATIONAL PRIMARY AIR POLLUTION IMPACTS IN THE FIFTH YEAR[a]

Emission points	Baseline emissions (Mg/yr)		Emission reductions			
			(Mg/yr)		(Percent)	
	HAP	VOC[b]	HAP	VOC[b]	HAP	VOC[b]
Equipment leaks	66,000	84,000	53,000	68,000	80	81
Process vents	317,000	551,000	292,000	460,000	92	83
Storage vessels	15,200	15,200	5,560	5,560	37	37
Wastewater collection and treatment operations	198,000	728,000	124,000	452,000	63	62
Transfer loading operations	900	900	500	500	56	56
Total	597,000	1,380,000	475,000	986,000	80	71

[a] These numbers represent estimated values for the fifth year. Existing emission points contribute 84 percent of the total. Emission points associated with chemical manufacturing process equipment built in the first 5 years of the standard contribute 16 percent of the total.

[b] The VOC estimates consist of the sum of the HAP estimates and the non-HAP VOC estimates.

Estimates of baseline emissions are presented in conjunction with emissions reductions estimates to better illustrate the level of control being achieved by the rule. Baseline emissions take into account the current estimated level of emissions control, based on State and Federal regulations, for each SOCMI emission point. As a result, baseline emissions reflect the level of control that would be achieved in the absence of the proposed rule.

The baseline emission estimates in Table 1 include the extrapolation of estimates for well-characterized processes to account for processes that could not be characterized. Consequently, the Table 1 estimates contain considerable uncertainty and are presented only to provide an estimate of the total nationwide impact of the proposed rule. Regulatory alternatives were developed using information only for the well-characterized processes and are discussed in section VII.A.2 of this preamble.

On average, SOCMI sources generate over twice as much VOC emissions as HAP emissions. Although the intent of the proposed rule is to reduce HAP emissions, the control of HAP's also results in the control of non-HAP VOC's. The control requirements of the HON would result in reduction of 80 percent of HAP emissions and 71 percent of VOC emissions beyond the baseline control level.

There would be a very slight increase in emissions of CO and NO_x, relative to other sources of these pollutants, resulting from the on-site combustion of fossil fuels as part of control device operations. Additional emissions of NO_x and CO resulting from increased electricity demand are not included in the impacts presented. Under the proposed rule, estimates of increased emissions of CO and NO_x are 1,570 Mg/yr (1,730 tons/yr) and 15,700 Mg/yr (17,300 tons/yr), respectively (see Table 2).

TABLE 2.—NATIONAL CO AND NO_x EMISSIONS IMPACTS IN THE FIFTH YEAR[a]

Emission points	CO Emissions[b] (Mg/yr)	NO_x Emissions[b] (Mg/yr)
Equipment leaks	0	0
Process vents[c]	1,490	15,100
Storage vessels	0	0
Wastewater collection and treatment operations[d].	80	600

TABLE 2.—NATIONAL CO AND NO_x EMISSIONS IMPACTS IN THE FIFTH YEAR[a]—Continued

Emission points	CO Emissions[b] (Mg/yr)	NO_x Emissions[b] (Mg/yr)
Transfer loading operations[c].	[e]	[e]
Total	1,570	15,700

[a] These numbers represent estimated values for the fifth year. Existing emission points contribute 84 percent of the total. Emission points associated with chemical manufacturing process equipment built in the first 5 years of the standard contribute 16 percent of the total.

[b] Emissions of these criteria pollutants are caused by operation of control devices.

[c] Emissions result from the combustion of natural gas along with the organic HAP emission streams in incinerators and flares.

[d] Emissions result from the combustion of various fossil fuels to generate steam for use in a steam stripper.

[e] Emissions are less than 5 Mg/yr.

The impacts for process vents and transfer operations are based on the assumptions that incinerators or flares are used to combust emission streams. To the extent non-combustion controls are used to achieve compliance with the standards, the actual CO and NO_x emissions would be lower.

Impacts for water pollution and solid waste were judged to be negligible and were not quantified as part of the impacts analysis. The basis for judging these impacts to be negligible is discussed in chapter 5.0 of BID Volume 1A.

B. Energy Impacts

Increases in energy use were estimated for steam, natural gas, and electricity. These three types of energy were compared and totaled on a BOE basis. Table 3 shows the estimated individual and total energy use increases.

TABLE 3. NATIONAL ENERGY IMPACTS IN THE FIFTH YEAR[a]

Emission points	Electricity[b]		Natural gas[c]		Steam[c]		Total[d]	
	(10^6 kw/hr/yr)	(10^3 BOE/yr)	(10^9 Btu/yr)	(10^3 BOE/yr)	(10^9 Btu/yr)	(10^3 BOE/yr)	(10^3 BOE/yr)	(TJ)
Equipment Leaks	0	0	0	0	0	0	0	0
Process Vents	240	400	6,600	1,090	0	0	1,500	9,600
Storage Vessels	15	25	0	0	0	0	25	160
Wastewater Collection and Treatment	6	10	0	0	5,300	880	890	5,700
Transfer Loading Operations	[e]	0	50	10	0	0	10	60
Total	260	440	6,650	1,100	5,300	880	2,420	15,500

[a] These numbers represent estimated values for the fifth year. Existing emission points contribute 84 percent of the total. Emission points associated with chemical manufacturing process equipment built in the first 5 years of the standard contribute 16 percent of the total.

[b] Conversion to BOE assumed a power plant heat rate of 10,000 Btu/kw-hr, heating value for oil of 144,400 Btu/gal, and 42 gal/bbl.

[c] Conversion to BOE assumed a heating value for oil of 144,400 Btu/gal and 42 gal/bbl.

[d] Due to rounding error, column totals may be slightly different.

[e] Electricity usage is less than $1 * 10^8$ kw-hr/yr.

Under the proposed rule, estimates for total energy use are 260 million kw-hr/yr of electricity, 6,650 billion Btu/yr of natural gas, and 5,300 billion Btu/yr of steam. This equates to 15,500 TJ/yr (2.4 million BOE/yr).

C. Cost Impacts

Cost impacts include the capital costs of new control equipment, the cost of energy (supplemental fuel, steam, and electricity) required to operate control equipment, and operation and maintenance costs. Generally, cost impacts also include cost savings generated by reducing the loss of valuable product in the form of emissions. Average cost effectiveness ($/Mg of pollutant removed) is also presented as part of cost impacts. Average cost effectiveness is determined by dividing the annual cost by the annual emission reduction.

Under the proposed rule, it is estimated that total capital costs would be $347 million (1989 dollars), and total annual costs, excluding the cost savings attributable to equipment leaks, would be $134 million (1989 dollars) per year (see Table 4). The impacts presented for the annual costs of controlling emissions from equipment leaks reveal a cost savings. By avoiding losses from equipment leaks, product is saved. The impacts analysis indicates that the value of the product that is saved is higher than the costs incurred from applying the control required by the rule. However, due to uncertainty about the true nature and magnitude of the cost savings from controlling equipment leaks, the total impacts estimate for the rule does not reflect this estimated cost savings. Instead, the total national annual control cost estimate, as presented in Table 4, has no cost or cost savings element for equipment leaks.

TABLE 4. NATIONAL CONTROL COST IMPACTS IN THE FIFTH YEAR[a]

Emission points	Total capital costs (10^6 $)	Total annual costs (10^6 $/yr)	Average HAP cost effectiveness[b] ($/Mg HAP)	Average VOC cost effectiveness[b] ($/Mg VOC)
Equipment Leaks	110	(1)	(20)	(10)
Process Vents	92	75	260	160
Storage Vessels	49	19	3,400	3,400
Wastewater Collection and Treatment Operations	86	35	280	80
Transfer Loading Operations	10	5	10,000	10,000
Total[c]	347	134	280	140

[a] These numbers represent estimated values for the fifth year. Existing emission points contribute 84 percent of the total. Emission points associated with chemical manufacturing process equipment built in the first 5 years of the standard contribute 16 percent of the total.

[b] Average cost effectiveness values are determined by dividing total annual costs by total annual emission reduction.

[c] Except for the Total Capital Costs column, the total figures do not include an element for equipment leaks because the analysis of equipment leak requirements indicated a cost savings.

It is expected that the actual compliance cost impacts of the proposed rule would be less than those presented, but it is not possible to quantify the amount. This is because cost estimates for some kinds of emission points were made assuming a separate control device would be constructed for each emission point. In reality, some operators will duct emissions from several of these emission points to a common control device, upgrade an existing control device, use other less expensive control technologies, implement pollution prevention technologies, or use emissions averaging. All of these options would reduce the estimated costs while achieving the same emission reductions. The effect of such practices on the national costs could not be estimated because the ability to use any of these practices is highly site-specific and data were not available to estimate how often the lower cost compliance practices could be utilized.

D. Economic Impacts

The economic impact analysis assumed that controls would be applied to all emission points and did not consider the selected applicability criteria. The fifth year annualized costs used in the economic impact analysis are $359 million per year. This is about 270 percent greater than the estimated costs for the proposed rule, which are $134 million per year. Therefore, the economic impacts calculated in this analysis are greater than the impacts associated with the proposed rule.

Because many SOCMI chemicals are used as raw materials in the production of other SOCMI chemicals, the economic impact analysis looked at cumulative costs of control for each of the over 400 SOCMI chemicals listed in Subparts F and H. About 88 percent of the chemicals are estimated to have a cost increase of less than 10 percent; more than 75 percent have cost increases less than 3 percent. Approximately 12 percent of the chemicals analyzed incur a cost increase of over 10 percent. All but 5 of these chemicals have annual national production of less than 10 million kilograms (11,000 tons) and are therefore low volume chemicals. [Two-thirds of the SOCMI chemicals have production over 10 million kilograms (11,000 tons).]

Market analyses for a subset of 20 of the chemicals estimated price increases from 0.3 percent to 4.8 percent and quantity decreases from 0.1 percent to 4 percent. The market analyses lead to the conclusion that percentage quantity decreases will be less than the percentage cost increases due to the regulation. The market analyses indicate that severe disruption of the industry is an unlikely result. Even for the total control cost scenario analyzed, which has a total cost of over 50 percent more than the anticipated costs associated with the proposed standard, significant numbers of business closures are not expected.

The diversity of chemical producers (most sources are involved in the production of several chemicals) decreases the likelihood of plant closure as a result of the regulation. A more likely consequence of the regulation is a change from a chemical manufacturing process with a higher cumulative control cost to a process with a lower control cost.

The impact for the low volume chemicals is the most uncertain. The cost estimates for these chemicals involve more uncertainty and, in many cases, industry profile information specific to the manufacturers of these chemicals was not available. Many of the low volume chemicals can be considered specialty chemicals. Generally, there is a lack of viable substitutes for specialty chemicals. In addition, the cost of specialty chemicals is usually only a small portion of the cost of the final good made with the specialty chemical. For these two reasons, a price increase for a specialty chemical is less likely to lead to a business closure or a production cutback than a price increase for a large volume chemical. This decreases the likelihood of large quantity impacts or closures.

The RIA addresses the benefits, costs, and economic impact of the regulation. Because benefits could only be addressed qualitatively, the RIA is not able to provide guidance as to which regulatory option optimizes net benefits. However, the RIA does summarize the types of benefits associated with the reduction of HAP's, VOC's, and particulate matter formed from VOC's. The consideration given to benefits, cost, and impacts estimates is discussed further in section VII.A.2 of this notice.

V. Emissions and Impacts Estimation Methodology

A. Overview

This section of the preamble explains the methodology used for estimating emissions and control impacts for existing sources. Emissions and control impacts estimates for new sources are derived from the estimates for existing sources. This section provides a broad overview of the methodology; details are presented in the BID, Volume 1A, chapter 4.0.

The objective of estimating emissions and control impacts was to compare the characteristics of alternative standard levels. The following types of impacts were estimated: emission reductions, control costs, energy impacts, secondary air pollution impacts such as NO_x and CO emissions, water pollution, and solid waste generation.

Although site-specific data on every chemical manufacturing process were not available, estimates of emissions and control impacts could be derived using a model emission point approach. The model emission point approach could be used because the emission mechanisms and applicable control technologies are well understood for the kinds of emission points regulated in the HON. Furthermore, these characteristics are similar across SOCMI chemical manufacturing processes.

The impacts analysis involved three steps: (1) Development of a data base characterizing the SOCMI, (2) development and assignment of model emission points for each kind of emission point, and (3) calculation of emissions and control impacts. The characterization of the SOCMI primarily involved identifying the specific routes, reactants, and process technologies used to produce a chemical and the corresponding SOCMI chemical manufacturing processes. In addition, information on existing State and Federal regulations was compiled for each kind of emission point to determine the baseline control requirements applicable to SOCMI chemical manufacturing processes.

Model emission points were developed to represent each kind of emission point in the SOCMI. The models were developed to emphasize those characteristics that most influence emissions, control costs, energy needs, and secondary environmental impacts. These models were applied to individual chemical manufacturing processes in the SOCMI data base using decision rules based on the level of information in the data base and the specificity of a given model.

The data base and model emission points used to estimate the impacts of the HON are based on published literature and information that EPA has collected during other rulemaking efforts including NSPS for air oxidation processes, distillation operations, reactor processes, volatile organic liquid storage, and equipment leaks; and NESHAP for vinyl chloride and benzene. Some information on wastewater collection and treatment operations is based on the document "Industrial Wastewater Volatile Organic Compound Emissions—Background Information for BACT/LAER Determinations" (EPA 450/3-90-004). Some additional information was obtained on wastewater operations and transfer loading operations by requesting it from the industry under authority of section 114 of the Act. Surveys were not conducted on the other kinds of emission points because it was judged that they would not add materially to the analysis.

Baseline emissions, those emissions that would occur in the absence of the HON, were estimated using calculation algorithms based on known, previously published, well established methodologies. The baseline emissions estimates were influenced by the production capacities of the chemical manufacturing processes in the SOCMI data base and the control requirements in existing Federal and State regulations. It was assumed that all chemical manufacturing processes would be in compliance with any applicable existing Federal or State air pollution regulations.

The impacts of the alternative standard levels were estimated using calculation algorithms previously developed for commonly used control technologies such as incinerators, flares, condensers, tank improvements, and steam strippers. The impacts estimates are based on average, representative, or typical emissions and control requirements for each kind of emission point. Thus, the estimates do not reflect the impacts that would be observed at any particular chemical manufacturing process. However, they do provide a reasonable estimate of nationwide emission reductions and control costs. In addition, these estimates are representative of the range of impacts that the SOCMI might incur under alternative standards.

More information concerning characterization of the SOCMI, model assignment, and estimation of impacts can be found in the BID, Volume 1A. Additional information concerning control technologies and costs can be found in the BID, Volume 1B. More detailed information concerning model development can be found in the BID, Volume 1C.

B. Control Technologies for Impacts Estimation

Before estimating the impacts of the proposed standard, EPA considered several different control technologies including, among others, combustion devices, product recovery devices, and pollution prevention opportunities. The control technologies selected for inclusion in the analysis were chosen because they are the most stringent control technologies that are universally applicable to emission points in the SOCMI and they can achieve emission reductions at least as stringent as the MACT floor. While the selected controls were used as the basis of the control impacts estimates, the proposed standards are written using formats that would allow use of other control technologies if the equivalent emissions reduction is achieved.

Listed below are the control technologies selected as the basis for the impacts calculations for each kind of emission point.

1. Process Vents

Since combustion devices are typically the most efficient control systems and the only types of control systems that can be applied universally to all process vents, they are used as the basis for the impacts analysis. Emission reduction of 98 percent is achievable using combustion devices. For halogenated streams, impacts were calculated based upon the use of a thermal incinerator and acid gas scrubbing. For nonhalogenated streams, impacts were calculated based upon the use of a thermal incinerator or a flare, whichever is less expensive in a given situation.

2. Storage

To estimate impacts for storage vessels, it was assumed that storage vessels will be controlled with internal floating roofs or refrigerated condenser systems depending on chemical properties of the stored liquid. Emission reduction of 95 percent is achievable through the use of tank improvements (e.g., installation of internal floating roof with appropriate seals and fittings) or condensers. For halogenated streams, impacts were calculated based upon the use of refrigerated condensers. For nonhalogenated streams, impacts were calculated based upon tank improvements unless the chemical was incompatible with floating roof materials. In this case, use of a condenser was assumed.

3. Wastewater Operations

Steam strippers have been evaluated as the basis for estimating impacts for wastewater treatment because steam strippers are efficient treatment systems for the removal of volatile HAP's from wastewater streams, and are also the most widely applicable control technology for wastewater streams. This technology achieves emission reductions of 0 to 99 percent, based on the chemical characteristics (e.g., strippability) of the wastewater stream. However, 95 to 99 percent reduction can be achieved for the majority of compounds regulated by the HON. Impacts were calculated based upon the use of a steam stripper followed by an air emissions control device. The use of enclosed collection and transport systems to suppress emissions up to treatment in the steam stripper was also assumed.

4. Transfer Operations

As with process vents, combustion was selected as the most stringent and universally applicable control technology for control of emissions from transfer operations. Emission reduction of 98 percent is achievable based upon the use of capture systems and combustion technologies. For halogenated streams, impacts were calculated based upon the use of a thermal incinerator and acid gas scrubbing. For nonhalogenated streams, impacts were calculated based upon the use of a thermal incinerator or a flare, whichever is less expensive in a given situation.

5. Equipment Leaks

Estimates of impacts for controlling emissions from equipment leaks were based on the use of LDAR at various action levels specified in the negotiated rule for equipment leaks. Emission reductions will vary from source to source as the mix of equipment components differs. Overall, sources are expected to achieve approximately 88 percent emission reduction.

C. National Emissions and Control Cost Calculations

The calculation of emissions and control impacts for four of the five kinds of emission points was performed for individual chemical manufacturing processes. However, for transfer loading operations, emissions and control impacts were estimated at the source level based on total chemical loading throughput at the rack since it is industry practice to have source-wide transfer racks rather than a dedicated rack for each chemical manufacturing process. Some chemical manufacturing processes were not as well characterized as others. In these cases, information was extrapolated to derive estimates of emissions, control costs, and other impacts as described in chapter 4.0 of the BID, Volume 1A. National impacts for existing sources were determined by aggregating the impacts across all the chemical manufacturing processes (or facilities in the case of transfer racks).

As previously described in section IV, estimates of emissions and control impacts for new sources are derived from the results for existing sources, and were calculated to be 16 percent of the total national impacts in the fifth year.

VI. Rationale for Provisions in Subpart F

This section describes the rationale for the selection and definition of the SOCMI source category as well as the proposed policies regarding area sources and pilot plants. The rationale for the selection and definition of the seven non-SOCMI processes will be discussed in section VIII, "Rationale for Provisions in subpart H."

A. Selection of Source Categories

1. Selection and Definition of the Synthetic Organic Chemical Manufacturing Industry

The initial source category list (57 FR 31576, July 16, 1992), required by section 112(c) of the Act, identifies source categories for which NESHAP are to be established. This list includes all major source categories of HAP's known to EPA at this time, and all area source categories for which a finding of adverse effects warranting regulation has been made. The source category list identifies the SOCMI as a source category because it contains major sources emitting at least 10 tons of any one HAP or more than 25 tons of any combination of HAP's annually.

The SOCMI is a segment of the chemical manufacturing industry that includes the production of many high-volume organic chemicals. The products of SOCMI are derived from approximately 10 petrochemical feedstocks. Of the hundreds of organic chemicals that are produced by the SOCMI, some are final products and some are the feedstocks for production of other non-SOCMI chemicals or synthetic products such as plastics, fibers, surfactants, pharmaceuticals, synthetic rubber, dyes, and pesticides. Production of such non-SOCMI end products is not considered to be part of SOCMI production and, as a result, the proposed standards would not apply to downstream synthetic products industries, such as rubber production or polymers production, that use chemicals produced by SOCMI processes.

For this rule, the EPA has defined the source category as consisting of chemical manufacturing processes that produce one or more of the 396 chemicals listed in § 63.105 of subpart G, or one or more of the chemicals listed in § 63.184 of subpart H. The production of these chemicals is believed to involve emissions of organic HAP's. These chemicals were identified from the literature describing SOCMI production processes, reactants, and products. A chemical was listed if organic HAP's could be used as reactants or produced in the manufacture of the listed chemical. However, EPA recognizes that chemicals on the list can be produced by processes that do not use an organic HAP as a reactant. In such cases, even if the chemical is on the list, those processes producing the chemical that do not use an organic HAP as a reactant or produce a HAP are not considered to be included in the source category.

In previous rules for SOCMI, EPA considered by-products, co-products, and intermediates to be products of a process. In implementation of these existing rules, there has been confusion over the meaning of the terms "product" and "to produce" and the correct way to decide whether a source "produces" a listed chemical and is subject to the standard. This confusion arises because of the complexity and diversity of SOCMI and the highly integrated nature of the chemical industry. Since the operations that would be regulated in the HON can also be part of an integrated group of operations dedicated to the production of non-SOCMI products such as pesticides or polymers, the industry is concerned that companies would have difficulty determining which standards apply to which process. Regulatory agencies have also found it difficult to determine applicability.

Most of the organic chemical manufacturing processes that would be subject to the proposed standards for SOCMI are classified in the four-digit SIC codes 2865, Cyclic Organic Crudes and Intermediates and Organic Dyes and Pigments, and 2869, Industrial Organic Chemicals Not Elsewhere Classified. However, not all processes classified in these two SIC codes would be subject to the proposed rule.

Because of this confusion, a different approach to defining applicability of this rule was developed. For the HON, applicability will be based on the primary product that is produced by a process or, where there is no primary product, on the intended purpose of the process. By-products, co-products, and isolated intermediates would not be considered in determining applicability since these were considered in development of the list of chemical products.

The proposed standard would apply to air oxidation, reactor, and distillation processes that make as a product any of the listed 396 SOCMI chemicals. For the purposes of this rule, EPA does not consider wastes to be products. Also, impurities or trace contaminants that are coincidentally processed and are not isolated are not considered to be a product.

This decisionmaking process, shown in Figures 1a and 1b, is based on the concept that applicability should be determined based on the primary product or purpose of the process, and is determined only once for each process. The primary product would be determined by the product that represents the largest percentage of the total mass produced by the process.

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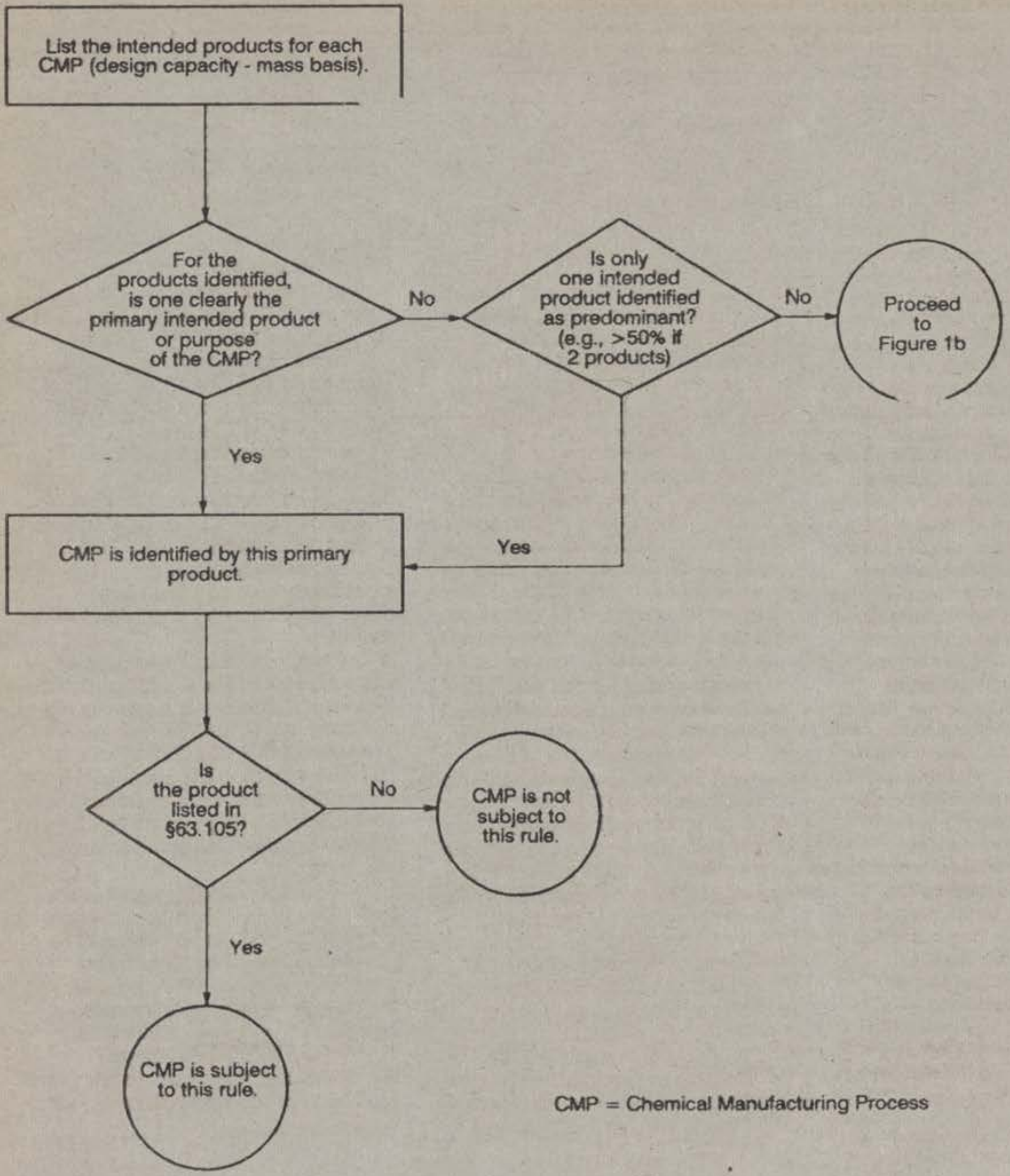
List the intended products for each CMP (design capacity - mass basis).
For the products identified, is one clearly the primary intended product or purpose of the CMP?
No
Is only one intended product identified as predominant? (e.g., >50% if 2 products)
No
Proceed to Figure 1b
Yes
CMP is identified by this primary product.
Yes
Is the product listed in §63.105?
No
CMP is not subject to this rule.
Yes
CMP is subject to this rule.

CMP = Chemical Manufacturing Process

Figure 1a. Applicability of the HON

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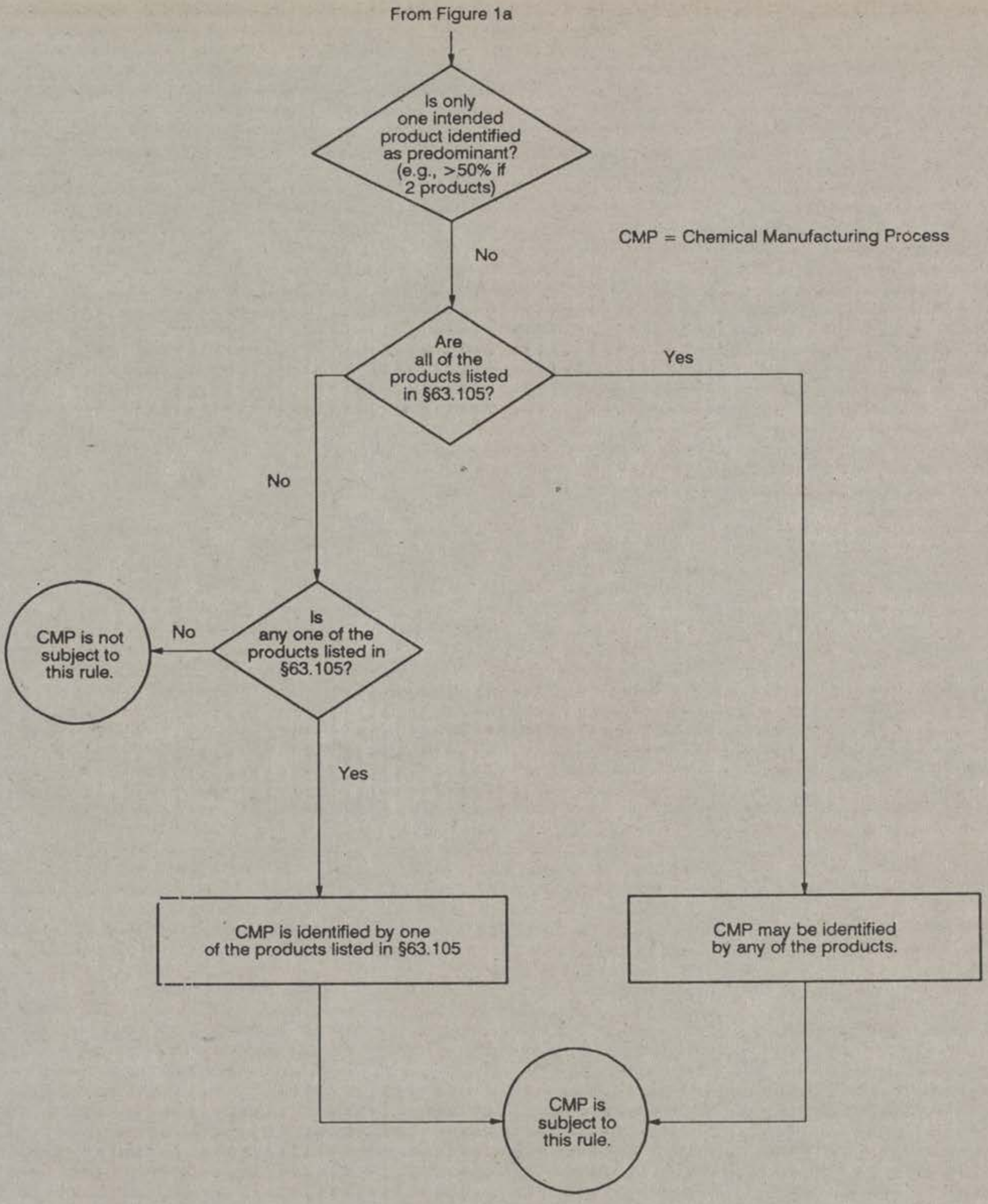
From Figure 1a
Is only one intended product identified as predominant? (e.g., >50% if 2 products)
No
CMP = Chemical Manufacturing Process
Are all of the products listed in §63.105?
Yes
No
Is any one of the products listed in §63.105?
No
CMP is not subject to this rule.
Yes
CMP is identified by one of the products listed in §63.105
CMP may be identified by any of the products.
CMP is subject to this rule.

Figure 1b. Applicability of the HON (continued)

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Figure 1a identifies a series of logic tests that determine if the chemical manufacturing process would be subject to this proposed rule. Figure 1b addresses situations where a process produces two or more chemicals that are not predominant. It is expected that in the vast majority of cases, the applicability can be determined using the decisionmaking process in Figure 1a. A comparison of this new approach with the approach used in previous rules for SOCMI sources found that both approaches identify the same set of processes as being subject to this rule.

A chemical manufacturing process is the group of equipment associated with air oxidation processes, reactor processes, and distillation operations that convert raw materials into one or more products. The chemical manufacturing process may include storage tanks, process equipment, transfer operations, and waste treatment predominantly used in the production of products.

Examples of chemical manufacturing processes that would be subject to the proposed standard are:

1. A process that produces ethylbenzene as the product;
2. A process that produces phenol or acetone as the product from cumene;
3. A chemical manufacturing process that produces methylmethacrylate by purification of an impure feedstock received from another plant site (a distillation operation on a polymer unit would not be considered a chemical manufacturing process);
4. A chemical manufacturing process that produces methanol as the intended product; or
5. A chemical manufacturing process that produces chloroform as the intended product.

Examples of processes that would not be considered subject to the proposed standard are:

1. A chemical manufacturing process that produces divinylbenzene as the predominant product and creates a benzene-containing waste that is sent to a benzene production process (the process producing benzene obviously would be subject to the proposed standard); or
2. A polymer process that produces polyethylene terephthalate that also generates an impure methanol stream (the polyethylene terephthalate process will be covered by the MACT standard for polymers and resins production).

The EPA selected the proposed approach for defining applicability because it is consistent with previous standards for this industry and the supporting information for the proposed standard. Specifically, the use of a set of specific chemicals to define the category is consistent with standards established for SOCMI under Section 111 of the Act. The definition of "product" being proposed for this standard reflects the assumptions used in the identification of the list of 396 SOCMI chemicals and the need for consistency with the benzene waste NESHAP, (40 CFR Part 61, Subpart FF) and future Section 112 standards for wastes. The definition of product was modified from the definition used in the NSPS for SOCMI air oxidation, reactor, and distillation processes to improve implementation of this rule. In addition, the definition was modified to recognize that wastes are sold and that waste materials may be added to other processes for purposes of waste minimization and treatment. These modifications were made to encourage waste minimization and to ensure consistency in what is considered a waste among Section 112 standards.

The proposed standard also includes provisions that specifically exclude certain industrial activities from the standard. These provisions were added to prevent any ambiguity in the applicability of the standard. For example, petroleum refinery processes are not part of the SOCMI source category and are therefore not subject to this standard. Many refinery processes make multiple-chemical mixtures for use as fuels. These processes would not be covered by the HON even if one of the 396 chemicals is present in the mixture because EPA plans to regulate refinery processes under a separate MACT standard. For the same reason, refinery processes used to produce feedstocks that are supplied to SOCMI chemical manufacturing processes are not within the definition of SOCMI and are not subject to the HON. However, a SOCMI chemical manufacturing process that is located at a refinery and produces one or more of the 396 chemicals as a single chemical product (rather than a mixture) would be considered a SOCMI process and would be subject to the HON.

Ethylene processes are also not considered to be part of the SOCMI source category. Ethylene processes, like refinery operations, generate mixed streams that provide the raw materials for subsequent chemical manufacturing processes. The chemical manufacturing processes that produce butadiene and benzene from these ethylene streams would be subject to the proposed rule. Ethylene processes will be evaluated under a separate MACT standard.

Solvent reclamation units operated at hazardous waste TSDF facilities requiring a permit under subtitle C that are separate entities and not part of a SOCMI chemical manufacturing process are not covered by the proposed HON. Instead, these facilities will be considered for regulation under separate section 112 standards.

Similarly, emission points that are typically associated with SOCMI processes but are not covered by the HON will be considered for regulation in separate standards. For example, separate MACT standards are planned for industrial cooling towers and boilers.

2. Exclusion of Area Sources

A SOCMI chemical manufacturing process would be subject to the proposed standard only if it is part of a major source. As noted earlier in this notice, a major source is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, more than 10 tons per year of any HAP or more than 25 tons per year of total HAP. In implementation of other provisions of the Act, the EPA has defined "potential to emit" as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity to emit includes any air pollution control equipment and restrictions on operations or on the amount of material processed, if such limitation is federally enforceable (see 40 CFR 52.21(4)). For the purpose of the proposed rule, the EPA considers "potential to emit" to be based on the same criteria. All operations at the site that emit or have the potential to emit would be considered when determining whether the source is major.

Based on the information available on the SOCMI and emission estimates developed for this standard, the EPA does not believe that it would be feasible for any of the identified plant sites to be area sources. Consequently, the EPA has no information that can be used to determine whether area sources in the SOCMI source category would present a threat of adverse effects to human health or to the environment. While EPA is aware that some owners of SOCMI facilities believe there are area sources in the industry, EPA has no information regarding the basis for this belief.

The EPA is requesting comment on whether there are any area sources in the SOCMI and if there are, whether the standard should apply to them. Information is requested on the nature of these sources; their chemical manufacturing processes; their potential health effects; as well as estimates of the number, location, and emissions.

3. Research and Development Facilities

The proposed standard would not apply to research and development facilities, such as laboratories and pilot plants, regardless of whether the facilities are located on the same site as a commercial chemical manufacturing process. Research and development facilities cover a wide range of operations and sizes from bench-top operations to small scale operating units. These facilities are operated under a very wide and changing variety of piping configurations, chemicals, chemical concentrations, and equipment to generate information that can be used to improve existing operations or to develop new products or design criteria for new production plants. Due to their very nature, there are frequent changes in the operations of research and development facilities.

Although EPA has extensive experience with the SOCMI, EPA has limited information regarding operations of research and development facilities and the appropriate controls for these facilities. In particular, EPA is presently uncertain how to structure a standard for research and development facilities to avoid imposing extremely burdensome recordkeeping and reporting requirements. The EPA concluded, therefore, that it would be appropriate to establish a separate source category covering research and development facilities to ensure equitable treatment. Standards for such facilities may be developed at a later date.

B. Selection of Emission Points

The proposed standard applies to all emission points in organic HAP emitting SOCMI chemical manufacturing processes that are part of a major source. The bulk of HAP's from SOCMI processes can be characterized as being emitted from five kinds of emission points: Process vents from reactor processes, air oxidation processes, and distillation operations; storage vessels that store reactants or products; transfer racks used to load products into tank trucks or railcars; wastewater streams; and equipment leaks.

1. Process Vents

Process vents are typically associated with product recovery systems in a chemical manufacturing process. Process vent emissions result primarily from the venting of VOC and HAP-containing inert gases and evacuation of equipment for vacuum processing. For this proposed standard, EPA has divided process vents into continuous and batch processes. The proposed provisions for vents would only apply to continuous process vents because the data upon which the standard is based, including the cost and control device performance, assume a continuous or near-continuous mode of operation. The EPA is considering developing a separate standard for process vents associated with batch processes.

The process vent provisions apply to the point at which emissions are vented to the atmosphere. Emissions may be vented directly to the atmosphere, or one or more process vents streams may be directed through a recovery device before emissions are released to the atmosphere. A Group 1 process vent is a vent with a flow rate of 0.005 scm/min or greater, an organic HAP concentration of 50 ppmv or greater, and a TRE index value less than or equal to 1. Vents that do not meet these applicability criteria are Group 2 vents and are not required to apply additional controls. If a recovery device is present, the outlet of the final recovery device is where the vent stream tests are performed to determine whether it is a Group 1 or a Group 2 vent. Additional rationale for this method of defining process vents and where process vent emissions are measured is presented in the proposal preamble to the SOCMI reactors NSPS (55 FR 26953, June 29, 1990).

Process vent streams that contain 0.005 weight-percent organic HAP or less are not regulated under the HON because it would be impractical to impose requirements for such small streams.

2. Storage Vessels

The proposed provisions for storage vessels apply to each individual vessel storing one or more liquids that are organic HAP's because the point of emissions to the atmosphere is typically the individual vessel, and control technologies such as tank improvements apply to each individual storage vessel rather than to a group of vessels. Vessels that store liquids containing organic HAP's as impurities are not subject to the HON. Such liquids contain only trace levels of organic HAP's and no significant HAP emission reductions would be achieved by controlling them. An impurity is produced coincidentally with another chemical substance and is processed, used, or distributed with it.

The storage vessel provisions would not apply to storage vessels permanently attached to motor vehicles such as trucks or railcars. The storage vessel provisions also do not apply to pressurized vessels designed to operate in excess of 204.9 kPa (29.7 psia) because such vessels operate under pressure and have no measurable emissions to the atmosphere.

3. Transfer Operations

The provisions of Subpart G are applicable to each rack, leg, or arm of the rack at which organic HAP liquids are loaded. This selection was made because there may be multiple points of release for the emissions from transfer operations. In addition, HAP emissions may pass through the loading arm back into the rack and be discharged to the atmosphere through a different arm. Emissions of HAP's may also be released directly to the atmosphere from the vehicle being loaded. To ensure that vapors are collected and transferred to a control device, the standard requires that organic HAP be loaded only into DOT certified or vapor tight tank trucks and railcars.

The transfer of liquids containing organic HAP's as impurities is not regulated by the HON. Such liquids contain only trace levels of organic HAP's and no significant HAP emission reductions would be achieved by controlling them. For purposes of the HON transfer operations provisions, an impurity is produced coincidentally with another chemical substance and is processed, used, or distributed with it.

4. Wastewater Collection and Treatment Operations

In the manufacture of many chemicals, wastewater streams containing organic HAP compounds are generated. These organic compounds can volatilize and be emitted to the atmosphere if the wastewater is managed in an open system or vented to the atmosphere. There are three categories of HAP-containing wastewaters produced at SOCMI facilities: (1) Process wastewaters; (2) maintenance wastewaters; and (3) water contaminated through leaks from heat exchangers and condensers. Because each category of wastewater is generated in a different way, control of emissions also differs. Recognizing that different approaches are needed to reduce the burden of control and ensure good practices for control of emissions from wastewater, EPA has developed separate provisions for each of the three categories.

Wastewaters generated during maintenance turnaround and routine maintenance activities would have to be properly managed to minimize air emissions. As part of the startup, shutdown, and malfunction plan for the source, the owner or operator would have to specify procedures that will be followed during maintenance turnarounds to ensure that wastewaters are collected, treated, and managed in a manner that minimizes emissions to the atmosphere. If the procedures in the plan are followed during the maintenance turnaround, the owner or operator only needs to document that the procedures specified in the plan were followed. The startup, shutdown, and malfunction plan would also have to include a description of the procedures that would be followed to properly manage process fluids drained from equipment during routine maintenance activities.

The proposed provisions for control of emissions from contaminated cooling water are based on a leak detection and repair program to minimize leakage of process fluids into cooling water. The intent of these provisions is to ensure proper operation and maintenance of the process. The leak detection and repair provisions require monitoring of cooling systems for significant increases in HAP content in the cooling water. If concentration increases above the action level are detected, then the leaking equipment would have to be repaired or by-passed within a specific time period. The EPA is requesting comments and data on what is an appropriate action level and what time period should be allowed for repairs. The proposed provisions present a range of possible values for action levels and time periods for repairs.

The proposed provisions for process wastewater apply to wastewaters which, during manufacturing or processing, come into direct contact with or result from the production of process fluids. Applicability of the proposed provisions is determined at the point of generation of the wastewater. (The point of generation is the location where the wastewater leaves the process equipment and enters waste management units.) This point was selected because:

(1) At this point, the production process ends and the wastewater collection system begins;

(2) This is the point where the concentration of organics is highest, therefore allowing judgment to be made regarding the need for control or monitoring of downstream treatment processes; and

(3) After this point, there is a potential for emissions from wastewater streams to occur.

5. Equipment Leaks

The term equipment leaks refers to the loss of process fluid through the sealing mechanism separating the process from the atmosphere. Equipment that can leak process fluid includes the valves, pumps, connectors, compressors, agitators, pressure relief devices, sampling connection system, open-ended lines or valves, product accumulator vessels, and instrumentation systems that are associated with all operations of the chemical production process. Based on the negotiated agreement, equipment that only contacts or contains process materials that are less than 5 percent HAP or are operated in HAP service for 300 hrs/yr or less is not subject to subpart H.

VII. Rationale for Provisions in Subpart G

A. Selection of Emission Control Requirements

The Act specifies that EPA, in determining the MACT level of control for sources regulated under section 112, must select emission control requirements that are at least as stringent as, or more stringent than, the emission control level identified as the floor. As a result, EPA began the process of selecting control requirements for the HON by determining the floor for the sources that would be subject to the HON. Once the floor was established for both new and existing sources, EPA considered additional control for each kind of emission point and the source as a whole taking into consideration the criteria enumerated in section 112(d) of the Act: Cost of achieving such reductions, any non-air quality health and environmental impacts, and energy requirements.

This section of the preamble describes the process EPA used to determine the floors for new and existing sources, the criteria EPA used to evaluate additional control requirements and the outcome of EPA's floor analysis and control selection process for each kind of emission point in the source. Section V of this preamble gives an overview of the data base used in this process, and memoranda in the docket provide a detailed description of the methodology and data used to derive the floors for new and existing sources.

1. Overview of the Process and Factors Considered

For SOCMI, what distinguishes a well-controlled facility is not only the type of control equipment used, but also the number of emission points that are controlled. Facilities differ in the number, combination, and design of their chemical manufacturing processes; the production capacities of their processes; the particular chemicals manufactured; and the control equipment used. Consequently, although SOCMI consists of similar kinds of emission points and the same controls are applicable, actual emissions and characteristics of SOCMI facilities vary widely from plant site to plant site. Due to this diversity, no "typical" source could be identified that would be representative across the source category. This diversity affected the approach used to define the floor for existing and new sources. Specifically, this diversity precluded the use of mass emission rate as a measure of performance since a mass rate based on an "average" source could require no control at some sources and be unachievable at other sources. As with previous rules for the SOCMI category, the EPA used the weight percent reduction achieved by the control device as the most appropriate measure of best performing technology (55 FR 26963). These characteristics of the controlled emission points and the control efficiencies for each kind of emission point were then combined to develop the source-wide floor. This process can be expected to result in a floor determination that is at least as stringent as that which would have been generated with actual source-wide data.

The information EPA used in determining the source-wide floor consisted of the estimates of the number and characteristics of the model emission points, the emission control requirements currently in place for each point based on information available to EPA, and the expected control efficiencies for the control technology. As discussed earlier in this notice, EPA used data on the control requirements in existing State and Federal regulations to identify those emission points that must be controlled in the absence of this rule and to identify the required controls. (The regulations were used as a surrogate for actual data on the control levels achieved in practice. In this analysis, EPA assumed all facilities would be in compliance with all applicable regulations.)

In the analysis of existing regulations, EPA found that where State and Federal rules require controls on emission points, they typically require use of the most effective control technologies (or performance levels) that are generally applicable. These control technologies are the same as the controls required in previous NSPS standards for the SOCMI and are widely accepted by the industry and regulatory agencies as technologies appropriate as bases for emission standards. These control technologies have been designated as the "reference control technologies" for the purpose of the rule being proposed today.

The reference control technologies (and their performance levels) specified in the proposed rule reflect information and knowledge of SOCMI that EPA has been developing since 1976. Through development of standards under section 111 and section 112 for SOCMI, EPA has developed extensive knowledge of the range of demonstrated control technologies applicable to SOCMI and the expected performance of these technologies. The selected technologies identified as the basis for the reference control requirements are:

—98 percent combustion control for process vents and transfer operations. For halogenated streams, 98 percent control is achieved using a thermal incinerator, boiler, or process heater, plus acid gas scrubbing. For nonhalogenated streams, 98 percent control is achieved using either a thermal incinerator, a flare, or a boiler or process heater.

—95 to 98 percent volatile organic HAP control of wastewater (for highly volatile chemicals) or control to a target concentration using a controlled steam stripper or other treatment technology. The actual control depends on individual chemical properties.

—Approximately 95 percent control of storage tanks through tank modifications or application of a vapor recovery system and control device. The actual efficiency depends on the individual chemical properties.

The above control technologies and work practices were selected as the technological basis for the HON since EPA is not aware of any demonstrated control technologies and operations that would perform with higher efficiencies and also be universally applicable to SOCMI. In many cases, application of the reference control technology is already required by either an existing State or Federal regulation.

To determine the source-wide floor for existing sources, EPA next examined the supporting information to identify the characteristics of the top 12 percent of the source category that applied the reference control technology to the smallest emission points. This analysis was done for each kind of emission point. The characteristics used to identify groups of emission points were physical parameters such as flow rate, HAP concentration, and vapor pressure. All the identified groups of emission points controlled by the reference control technology were then combined to define the weighted average percent reduction achieved by these best performing 12 percent of the sources. The results of this analysis are described in the next section as part of the discussion of specific considerations for each kind of emission point.

A similar method was used to determine the source-wide floor for new sources. For each kind of emission point, the characteristics of the smallest emission point controlled by the reference control technology were identified as the means for determining the best controlled similar source. Again, the source-wide floor was determined by the combination of control levels for all emission points.

Once the floors were established, EPA considered whether to establish a standard that requires an emission reduction that is more stringent than the floor. In selecting the standard, EPA considered the magnitude of the reduction in HAP emissions, the cost and economic impacts, energy impacts, non-air quality health impacts, and other environmental impacts. The objective in this consideration is to achieve the maximum degree of emission reduction that does not result in unreasonable economic or other impacts. As with the floors, EPA determined the standard for the source by combining selected control levels for each kind of emission point. The next section presents the additional control levels considered for each kind of emission point and the basis for the selected level.

2. Alternative Control Levels and Selection of Requirements

In the selection of the proposed standard, the EPA considered the merits of alternative control levels for individual emission points as well as the overall impacts of the group of decisions in light of the statutory criteria. In the first step of the process, regulatory alternatives were developed for each kind of emission point. These alternatives differed only in the number of emission points that would be controlled by the reference control technology.

Regulatory alternatives were developed using information for the chemical processes that could be characterized sufficiently to permit assignment of model emission points. Approximately 97 percent of the nationwide chemical production capacity is associated with these well characterized processes. The emission reduction and control cost estimates for the regulatory alternatives are summarized in Tables 5 and 6.

TABLE 5.—CONTROL ALTERNATIVES FOR EXISTING SOURCES SUBJECT TO SUBPART G[a]

Kinds of emission points[b]	Control option	Emission reduction mg/yr	Percent emission reduction	Cost $1,000/yr.	Avg. $/mg.	Inc. $/mg.
Process vents	1	232,000	93	51,000	220	....
	*2	234,000	93	54,000	230	1,800
	3	235,000	94	58,000	250	2,500
	4	236,000	94	62,000	260	3,900
	5	238,000	95	93,000	390	22,000
Wastewater	0	0	0	0	0	....
	*1	82,100	84	24,000	290	290
	2	82,800	85	26,000	310	2,600
	3	85,700	88	38,000	440	4,200
	4	88,900	91	104,000	1,200	21,000
Transfer	*1	360	65	3,100	8,700	....
	2	420	77	6,500	15,000	54,000
Storage: Small[c]	*1	0	0	0	0	....
	2	360	95	19,000	53,000	53,000
Storage: Medium[d]	*1	330	70	2,100	6,500	....
	2	410	88	5,700	14,000	43,000
Storage: Large[e]	1	1,700	17	4,000	2,400	....
	*2	4,800	48	7,300	1,500	1,100
	3	8,800	87	19,000	2,100	2,900
Total[f]. Floor[g]	....	234,000	65	60,000	280	....

TABLE 5.—CONTROL ALTERNATIVES FOR EXISTING SOURCES SUBJECT TO SUBPART G[a]—Continued

Kinds of emission points[b]	Control option	Emission reduction mg/yr	Percent emission reduction	Cost $1,000/yr.	Avg. $/mg.	Inc. $/mg.
Proposed option	....	322,000	89	91,000	280	350
Total control	....	337,000	94	247,000	730	10,000

[a] The impacts in this table are based on well characterized chemical manufacturing processes and were estimated using the model emission point approach described in Section V of this notice.
[b] Only the impacts for emission points subject to Subpart G are described. Equipment leaks are also part of a SOCMI source but are subject to Subpart H.
[c] Small denotes storage vessels with capacity greater than or equal to 38 m³ (10,000 gal), but less than 75 m³ (20,000 gal).
[d] Medium denotes storage vessels with capacity greater than or equal to 75 m³ (20,000 gal), but less than 151 m³ (40,000 gal).
[e] Large denotes storage vessels with capacity greater than or equal to 151 m³ (40,000 gal).
[f] These totals do not include control impacts for equipment leaks. Floor tables are option 1 for each emission point. Proposed option totals are the option for each emission point. Total control tables are the last option for each emission point.
[g] The first option for each kind of emission point represents the floor.

TABLE 6.—CONTROL ALTERNATIVES FOR NEW SOURCES SUBJECT TO SUBPART G[a,b]

Kinds of Emission Points[c]	Control Option	Emission Reduction Mg/yr	Percent Emission Reduction	Cost $1,000/yr.	Avg. $/Mg	Inc. $/Mg
Process Vents	*1	45,000	95	13,000	290	....
	2	45,000	95	18,000	390	47,000
Wastewater	1	12,900	70	5,100	400	....
	*2	15,900	86	6,900	430	600
	3	16,900	91	19,800	1,200	13,000
Transfer	*1	68	65	590	8,700	....
	2	80	77	1,200	15,000	54,000
Storage:	*1	61	85	1,500	24,000	....
Small[d]	2	68	94	3,600	53,000	304,000
Storage:	*1	62	70	400	6,400	....
Medium[e]	2	78	88	1,000	14,000	42,000
Storage:	1	0	0	0	0	....
Large[f]	*2	1,100	81	800	730	730
	3	1,100	81	1,000	950	117,000
Total[g]						
Floor[h]	....	58,000	86	21,000	350	....
Proposed Option	....	62,000	92	23,000	370	630
Total Control	....	63,000	93	45,000	710	21,000

[a] The impacts in this table are based on well characterized chemical manufacturing processes and were estimated using the model emission point approach described in Section V of this notice.
[b] bEstimated control impacts for fifth year after promulgation of the HON based on an assumed industry growth of 3.5 percent each year.
[c] Only the impacts for emission points subject to Subpart G are described. Equipment leaks are also part of a SOCMI source but are subject to Subpart H.
[d] Small denotes storage vessels with capacity greater than or equal to 38 m³ (10,000 gal), but less than 75 m³ (20,000 gal).
[e] MeOdium denotes storage vessels with capacity greater than or equal to 75 m³ (20,000 gal), but less than 151 m³ (40,000 gal).
[f] Large denotes storage vessels with capacity greater than or equal to 151 m³ (40,000 gal).
[g] These totals do not include control impacts for equipment leaks.
Floor tables are option 1 for each emission point.
Proposed option totals are the option for each emission point.
Total control tables are the last option for each emission point.
[h] The first option for each kind of emission point represents the floor.

Table 5 provides the control costs and emission reductions associated with alternative control levels considered for existing sources in the source category. Table 6 presents the same information for the alternative control levels considered for new sources in the source category. The estimates presented in Tables 5 and 6 differ from the estimates summarized in section IV of this notice because those earlier estimates include an extrapolation to account for processes that could not be modeled.

In selection of the proposed standard, the EPA considered: (1) Magnitude of the emission reduction; (2) cost of the emission reduction; (3) economic impacts and feasibility; (4) consistency with previous decisions; (5) other non-air quality health and environmental impacts; and (6) energy requirements. Based on consideration of these factors, the EPA selected a standard that would ensure a significant reduction in HAP emissions from the SOCMI. The EPA's analysis estimates that the selected standard would reduce HAP emissions from the four kinds of emission points by 322,000 Mg/yr (355,000 tons/yr) from existing sources and 62,000 Mg/yr (68,000 tons/yr) from new sources in the fifth year of the standard. This represents an emission reduction of about 89 percent for existing sources (92 percent for new sources) in comparison to the emissions that would have occurred without the standard. For the group of well characterized sources, the total nationwide annual cost associated with this emission reduction is estimated to be about $114 million/yr—$91 million/yr of this cost is from control of existing sources and $23 million/yr is from control of new sources. (As stated above, these estimates represent processes sufficiently well characterized to assign models. These estimates differ from the national numbers presented in section IV which include an extrapolation to account for processes that could not be modeled.)

The nationwide annual cost of this rule is estimated to be $182 million. Of this total cost, about $48 millon/yr results from the costs of monitoring, recordkeeping, and reporting provisions.

a. *Process vents: Existing sources.* The determination of the best 12 percent of the process vents was based on consideration of the various parameters that affect emission rates (flow rate, HAP concentration, net heating value, and corrosion properties). These parameters are highly variable from one process to another depending on the constituents of the vent stream. Therefore, it is not appropriate to define best performing in terms of any single parameter or even any specific combination of them since the combination would be different from one process to another. A surrogate measure for these parameters that influence whether or not a vent stream is controlled and the specific control technology applied is cost effectiveness. Cost-effectiveness values can be used to reflect all possible combinations of these parameters and the cost of controlling streams with the reference control technology (98 percent efficient combustion control). Use of the single criterion of cost effectiveness would result in a more understandable and enforceable rule.

The procedure used to define the groups of process vents was to rank all process vents in the data base from highest to lowest cost-effectiveness of control and to determine the point where less than 12 percent of the vents were controlled. This analysis showed that the dividing line between the groups occurred at a cost effectiveness of $1,500/Mg ($1,360/ton). Of the process vents with cost effectiveness values of less than $1,500/Mg, 44 percent were controlled with the 98 percent efficient combustion devices. Thus, all process vents with cost effectiveness of $1,500/Mg and lower have 98 percent control efficiency in the determination of the source-wide floor.

In selection of the proposed standard for existing sources, EPA believes that a level of emission reduction from process vents more stringent than the level associated with the floor is achievable. The EPA is proposing to require the control level in Option 2, which has an incremental cost-effectiveness of $1,800/Mg ($1,630/ton) and would require control of vents that have TRE cost-effectiveness values of up to $2,000/Mg ($1,800/ton). Although EPA is proposing this specific control level, EPA is requesting comment on Options 1 through 4. These options would require control of vents with TRE cost-effectiveness values of up to $1,500/Mg ($1,360/ton) in Option 1 (the floor component); vents with TRE cost-effectiveness values of up to $3,000/Mg ($2,720/ton) in Option 3; and vents with TRE cost-effectiveness values of up to $5,000/Mg ($4,540/ton) in Option 4. The EPA anticipates that in consideration of the final decision EPA will give more weight to Options 1 through 3. The Option 2 control level was selected in the proposed rule based on considerations specific to the SOCMI category and would not necessarily be appropriate for other source categories. Therefore, it should not be viewed as a precedent for decisions on other standards. The EPA recognizes that there are differing views regarding the appropriate criteria for determining the control level. Consequently, EPA is requesting comments on the appropriateness of particular control choices within the range of options described above and asks that commenters provide supporting rationale for their preferences.

The EPA selected the proposed control level considering the emission reduction achieved by the alternative control options and considering the criteria enumerated in section 112(d) of the Act: The cost of achieving such emission reduction; any non-air quality health and environmental impacts; and energy requirements. As a matter of general policy in decisions to select control levels above the floor, EPA believes that the cost-effectiveness of controls and a comparison of benefits, both quantifiable and nonquantifiable, and costs are primary considerations. In any such comparison of costs and benefits, the uncertainties associated with the benefit and cost estimates should be characterized.

In this proposed rulemaking, however, EPA's ability to do such a comparison was severely limited by the lack of sufficient data on the characteristics of the emission sources and the complexity of the SOCMI category. A preliminary assessment of the benefits of the potential emission reductions was prepared using the available data. However, because of the data limitations cited above, EPA does not believe that the analysis provides an adequate basis for decisionmaking. This analysis has been placed in Docket A–90–19. The EPA invites comment on this analysis, its usefulness and defensibility, and requests the submittal of data and methods that could improve the analysis. The EPA will review any such comments and data and will, to the extent practicable, evaluate their implications for the risk assessment prior to the final rule. Despite the difficulty of estimating quantitative benefits for this rulemaking due to the complexity of the source category, data limitations, and timing of the rule, EPA remains committed to evaluating benefits as well as costs associated with decisions to go above the floor in future MACT standards. The EPA also intends to review cost-effectiveness of decisions as part of these future rulemakings.

Due to this lack of a benefits assessment, EPA used benchmarks from previous air toxics regulatory decisions and past air toxics benefits studies as a surrogate measure for benefits considerations in the decision on the proposed control level. The information considered consisted of the Benzene NESHAP decisions (49 FR 23498, 54 FR 38044, and 55 FR 8292) and the Vinyl Chloride NESHAP (41 FR 46560). For example, one decision that reflected consideration of balancing emission reductions against costs was the benzene storage standard (55 FR 38044). In that decision, the cost-effectiveness of the selected option was estimated to range from $128/Mg to $909/Mg ($116/ton to $824/ton) in 1982 dollars ($160/Mg to $1,100/Mg [$145/ton to $1,000/ton] in 1989 dollars).

Although the cost-effectiveness measures from past decisions were considered in selection of the proposed control level, EPA also considered the differences between this proposed rule and the earlier decisions on benzene and vinyl chloride. This rule applies to emissions of 112 HAP's while the earlier rules only addressed cancer health effects of a single HAP (i.e., benzene or vinyl chloride). Because of the noncancer health effects associated with many of the 112 HAP's, there are questions about the degree to which past decisions may serve as a guide to this proposal. The EPA is not able at this time to quantify the noncancer health effects so that they can be combined with the cancer health effects for the HON.

Additional factors were considered in the selection of the proposed control level. These factors include the magnitude of the emission reduction, the cost of this reduction, consistency with past decisions, location of facilities near population centers, and other non-air quality environmental benefits from the control. The consideration of these factors is summarized below.

Existing source process vents are the single largest contributor of HAP emissions from the SOCMI source category. The additional emission reduction beyond that achieved at the floor that would result from the proposed control level is about 1,600 Mg/yr (1,800 tons/yr), which represents 0.7 percent of the emission reduction achieved at the floor. This additional control has a cost effectiveness of $1,800/Mg ($1,630/ton) of HAP and with a TRE equivalent to a cost-effectiveness of $2,000/Mg ($1,800/ton). The cost of this additional control (along with the cost of the other proposed control requirements) is estimated to result in less than a 3 percent price increase for SOCMI chemicals. The EPA requests comments on whether the costs of the selected control requirements are reasonable and asks that the commenters provide supportive rationale for their judgments on the costs.

The EPA is requesting comment on a range of control options because of the previously discussed uncertainties in the measure of the benefits of control and because of the uncertainties in the cost that would actually be experienced. Because of the conservative assumptions used to develop the control costs and the TRE format of the vent provisions, it is unlikely that any source would actually incur costs at the TRE level (the criterion for defining vents that must apply control) that is equivalent to $2,000/Mg ($1,800/ton). The cost analysis used in developing the supporting information for this standard was based on use of a dedicated control device for each vent. Actual costs would be lower where one device could be used to control emissions from several vents. The cost of control would also be lower in those cases where it is feasible to use a boiler or process heater instead of an incinerator. Finally, the provisions are structured using a TRE index approach. Since the standard is in a TRE format, many facilities may be able to use product recovery to change vent stream characteristics so that they are below the relevant applicability criteria. This flexibility is expected to allow some sources to lower their cost of compliance through changes in equipment or operations. As a result, the impacts analysis may overstate the costs of complying with the proposed control requirement. The EPA solicits comments concerning whether the control costs for process vents are overestimated and the extent of the overestimate.

b. *Process vents: New sources.* The analysis of the data base showed that the maximum degree of emission reduction being achieved by the best-controlled vent occurs at a cost effectiveness value of $11,000/Mg ($9,980/ton). In the determination of the process vent component of the source-wide floor for a new source, vents with a cost effectiveness value for control of $11,000/Mg ($9,980/ton) would be controlled.

For the standard for new sources, EPA considered selecting a level of emission reduction more stringent than the level associated with the source-wide floor. However, a standard more stringent than the floor component is not being proposed because the costs were considered high given the very small additional emission reduction available. The additional control would achieve an additional emission reduction of about 100 Mg/yr at a cost of about $5 million/yr. Therefore, the control level associated with the source-wide floor was considered to represent the maximum reduction achievable considering cost and other impacts. The proposed standard for new sources reflects the floor level of control for new vents.

c. *Storage vessels: Existing sources.* In the analysis of the data base to determine the storage vessel components of the source-wide floor, EPA divided the population of model vessels into three size ranges. The size ranges were: 38 m³ to 75 m³ (10,000 to 20,000 gal) (small); 75 to 151 m³ (20,000 to 40,000 gal) (medium); and greater than or equal to 151 m³ (40,000 gal) (large). The first two of the ranges include the two smallest model vessel sizes in the data base and the third range is the combination of the remaining four model vessel size ranges. The larger size range vessels were aggregated into one group because no differences in control based on vessel capacity were expected for the vessels exceeding 40,000 gallons capacity. Only one State regulation distinguishes among vessels with capacities greater than 151 m³ (40,000 gal) and none of the greater than 151 m³ (40,000 gal) storage vessels in the data base are affected by those requirements. Consequently, separate analysis of each of the larger capacity range model vessels would provide the same results as a combined analysis.

The parameter used in the analysis to determine the storage vessel components of the source-wide floor was the vapor pressure of the liquid being stored. Vapor pressure is one of three major factors that most influence emissions from storage vessels and potential emission reductions. Furthermore, vapor pressure is commonly a prime determining factor in whether or not a vessel is controlled.

For each segment of the storage vessel population, the procedure used to define components for the source-wide floor was to rank storage vessels from lowest to highest vapor pressure. Next, the vapor pressure at which at least 12 percent of the vessels is controlled by the reference control technology was determined. The analysis showed that at liquid vapor pressures of 13.1 kPa (1.9 psia) and higher more than 12 percent of the medium and large vessels are controlled with the reference technology. Of the vessels storing liquids with vapor pressures of 13.1 kPa (1.9 psia) and higher, about 30 percent of the medium vessels and 45 percent of the large vessels were controlled with the reference technology. Therefore, the storage vessel components of the source-wide floor are control of vessels 75 m³ (20,000 gal) and higher that store liquids with vapor pressures of 13.1 kPa (1.9 psia) and higher. For small vessels, the analysis of the data base showed that only 6 percent of the vessels were expected to be controlled with the reference technology. Therefore, since less than 12 percent of the small vessels are controlled with the reference control technology the small vessel component of the source-wide floor is no control.

For each of the three populations of storage vessels, EPA considered several alternative levels of emission limitation. The alternatives differed in the vapor pressures of the liquids that would require control and ranged from the vapor pressure associated with the component of the source-wide floor (i.e., 13.1 kPa [1.9 psia]) to vapor pressures of 0.07 kPa (0.01 psia). After considering the alternatives and the associated impacts, EPA proposes to require the following storage vessels be equipped with the reference control technology: (1) Vessels with a capacity greater than or equal to 151 m³ (40,000 gal) storing HAP's with vapor pressures of 5.2 kPa (0.75 psia) or greater and (2) vessels with a capacity greater than or equal to 75 m³ (20,000 gal) storing HAP's with vapor pressures of 13.1 kPa (1.9 psia) and greater. No control requirements are being proposed for storage vessels with capacities less than 75 m³ (20,000 gal). In the selection of these proposed control requirements, EPA believes, based on the available data, that an emission reduction more stringent than the level associated with the floor component for large vessels is achievable considering the statutory criteria. The EPA also believes that no emission levels more stringent than the level associated with the floor components for medium and small vessels are achievable considering the statutory criteria. The statutory criteria considered in selection of the proposed control requirements were the magnitude of the emission reductions, the cost and economic impacts, energy impacts, non-air quality health impacts, and other environmental impacts. The specific considerations of the statutory factors in each of these decisions are summarized below.

The proposed control requirements for large storage vessels containing liquids with HAP vapor pressures of 5.2 kPa (0.75 psia) or higher are estimated to achieve an emission reduction of 4,800 Mg/yr (5,280 tons/yr) of HAP's compared to emissions that would occur without the standard. This represents a 48 percent reduction of emissions from this segment of the SOCMI storage vessel population. The annual cost to achieve this reduction is about $7.3 million and the incremental cost-effectiveness of the control beyond the floor is $1,100/Mg. Although EPA considered proposing to control HAP's with vapor pressures of 10.3 kPa (1.5 psia) for large vessels, it was found that this option was less economically efficient (i.e., higher incremental cost-effectiveness) than the proposed option. The cost-effectiveness of the proposed option is in the range of the cost-effectiveness values of the Benzene Storage NESHAP.

The non-air quality health impacts as well as the energy and other environmental impacts of the alternative control levels were also considered in the selection of the proposed requirements for large storage vessels at existing sources. No non-air quality health impacts were expected from any of the alternatives and the energy and other environmental impacts did not vary significantly among the alternatives. Thus, these considerations did not affect the choice of the proposed requirements. The controls required by the proposed requirements are not expected to create any secondary emissions of carbon monoxide or nitrogen oxides. In addition, no secondary benefits of control of non-HAP VOC's are expected. The energy impacts estimated for the selected control requirements were about 5,400,000 kW-hr/yr for electricity. The energy requirements associated with control of all large vessels storing HAP's of any vapor pressure was about 20 percent greater. The energy required for the control equipment represents a small percentage of the total energy requirement for this industry. Based on previous studies of SOCMI, no unreasonable adverse energy impacts are expected from any of the alternative control levels considered.

A more stringent level of emission reduction is not being proposed because the additional reduction that could be achieved through further control of large storage vessels was not considered significant, given the additional cost. The additional emission reduction achieved through control of HAP's with vapor pressures lower than 5.2 kPa (0.75 psia) is about 4,000 Mg/yr (4,300 tons/yr). This control would cost an additional $11.2 million per year. The cost-effectiveness of this additional emission reduction is $2,900/Mg. The cost of achieving this emission reduction was not considered reasonable.

In selecting the proposed emission limitations for small and medium storage vessels at existing sources, EPA considered levels of emission reduction more stringent than the level associated with the source-wide floor for these emission points. The alternative control options considered for small vessels were: (1) Vapor pressures of 76.6 kPa (11.1 psia) and higher; (2) vapor pressures of 5.2 kPa (1.9 psia) and higher; and (3) vapor pressures greater than 0.07 kPa (0.01 psia). The alternative control options beyond the floor component considered for medium vessels were: (1) Vapor pressures of 0.7 kPa (0.1 psia) and higher; and (2) vapor pressures greater than 0.07 kPa (0.01 psia). None of the alternative options for either small or medium vessels is being proposed since the costs were considered high given the very small potential emission reductions. Control beyond the floor component for medium storage vessels would reduce emissions by less than 100 Mg/yr (110 tons/yr) at a cost of $3.6 million/yr. With small storage vessels the maximum potential reduction of 360 Mg/yr would cost about $19 million/yr. The average cost-effectiveness of these control requirements varied from $53,000/Mg ($48,000/ton) for small vessels to about $14,000/Mg ($12,700/ton) for medium vessels. Therefore, EPA believes that the control level for the small and medium storage vessels components of the source-wide floor represented the maximum reduction achievable considering cost and other impacts. The EPA is proposing to require control of medium storage vessels storing HAP's with vapor pressures of 5.2 kPa (1.9 psia) and higher. No control requirements are being proposed for small storage vessels. For both small and medium storage vessels, this proposal requires no control beyond the respective components of the source-wide floor.

An additional consideration in the selection of the proposed options was the non-air quality health impacts as well as the energy and other environmental impacts of the alternative control levels. No non-air quality health impacts were expected from any of the alternatives and the other environmental impacts did not vary significantly among the alternatives. Thus, these considerations did not affect the choice of the proposed requirements. The co-controls required by the proposed requirements are not expected to create any secondary emissions of carbon monoxide or nitrogen oxides. In addition, no secondary benefits of co-control of non-HAP VOC's are expected. The energy impacts for the required controls for medium storage vessels would be about 2,600,000 kW-hr/yr for electricity. The energy requirements associated with control of medium storage vessels containing liquid HAP's of any vapor pressure is slightly greater, but is not considered significant. The energy required for the control equipment represents a small percentage of the total energy requirement for this industry. Based on previous studies of SOCMI, no unreasonable adverse energy impacts are expected from any of the alternative control levels considered.

d. *Storage vessels: New sources.* The determination of the best controlled storage vessels also used the three size ranges of model vessels. For the reasons previously described, the parameter used in the analysis to determine the storage vessel components of the source-wide floor was the vapor pressure of the liquid being stored.

The analysis of the data base showed that the maximum degree of emission limitation being achieved by the best-controlled vessels in each population segment occurs at 13.1 kPa (1.9 psia) for small and medium vessels and at 5.2 kPa (0.75 psia) for large vessels. For each of the three segments of the storage vessel population, EPA considered several alternative levels of emission limitation more stringent than the emission level associated with the floor component. The alternatives were structured similarly to those for existing storage vessels but differed in the vapor pressures of the liquids that would be required to apply controls. The alternative control options examined for storage vessels at new sources were: (1) for large and medium vessels, vapor pressures 0.7 kPa (0.1 psia) and greater and vapor pressures of 0.07 kPa (0.01 psia) and greater; and (2) for small vessels, vapor pressures of 0.07 kPa (0.01 psia) and greater.

The EPA is proposing to control large storage vessels that store HAP's with vapor pressures of 0.7 kPa (0.1 psia) and higher. This proposed control will result in a significant emission reduction at a reasonable cost. The proposed control requirement for large storage vessels is estimated to achieve an emission reduction of 1,100 Mg/yr (1,200 tons/yr) of HAP's compared to emissions that would occur without the standard. This represents an 87 percent reduction from this segment of the SOCMI storage vessel population. The annual cost to achieve this reduction is about $0.8 million and the cost-effectiveness of this control is $730/Mg ($670/ton).

The non-air quality health impacts were considered in this decision as well as the energy and other environmental impacts of the alternative control levels. As with the other decisions, these factors did not vary significantly among the alternatives. Thus, these considerations did not affect the choice of the proposed requirements. The energy required for control beyond the floor component would be about 200,000 kW-hr/yr for electricity.

The EPA is not proposing to require control of vapor pressures lower than 0.7 kPa (0.1 psia) for large storage vessels at new sources because the additional emission reduction achieved through further control was not significant, given the additional cost. Further control was estimated to result in only 2 Mg/yr additional reduction at an additional cost of $233,000/yr. This cost was judged to be disproportionately high.

For small and medium vessels at new sources, none of the alternative control options more stringent than the floor components were selected. After considering the emission reductions, costs, and other impacts of the alternatives, EPA determined the cost to achieve the additional reduction was high given the very small potential emission reductions. Additional control would reduce emissions from medium storage vessels by less than 20 Mg/yr (22 tons/yr) at an additional cost of about $700,000/yr. For the small storage vessels segment of the population, further control would result in less than 10 Mg/yr (11 tons/yr) emission reduction at an added cost of about $2.1 million/yr. The incremental cost effectiveness values for these control requirements are about $304,000/Mg ($276,000/ton) for small vessels and $42,000/Mg ($38,100/ton) for medium vessels. The consideration of the non-air quality health impacts as well as the energy requirements and other environmental impacts was similar to that in the decision for existing storage vessels. Therefore, EPA determined that the control level for the small and medium storage vessels components of the sourcewide floor represented the maximum reduction achievable considering cost and other impacts.

e. *Transfer operations: Existing sources.* In the analysis of the data base to determine the transfer rack components of the source wide floor, EPA divided the population of model racks into two groups based on the vapor pressure of materials loaded. The vapor pressure groupings were transfer racks loading materials with average vapor pressures less than 10.3 kPa (1.5 psia) and racks loading materials with vapor pressures of 10.3 kPa (1.5 psia) and higher. These two groups are the result of several simplifying assumptions used in the analysis and the fact that most State regulations only require control of racks loading chemicals with vapor pressures of 10.3 kPa (1.5 psia) and higher.

The procedure used to determine the transfer rack components of the source-wide floor was to rank the racks in these two groups by quantity loaded (throughput) in ascending order. Since emissions from transfer operations are largely determined by throughput and vapor pressure, throughput was expected to provide a good measure of whether or not a rack is controlled. For both groups, the throughput at which more than 12 percent of the racks is controlled by the reference control technology was determined. The analysis showed that for transfer racks that load HAP's with vapor pressures of 10.3 kPa (1.5 psia), and higher, that have throughputs greater than or equal to 0.65 million *l*/yr (170,000 gal/yr) more than 12 percent of the racks are controlled with the reference technology. None of the transfer racks that load HAP's with vapor pressures less than 10.3 kPa (1.5 psia) are controlled with the reference technology. Therefore, the transfer rack component of the source-wide floor is control of racks that load HAP's with vapor pressures of 10.3 kPa (1.5 psia) and higher and that have throughputs of 0.65 million *l*/yr (170,000 gal/yr) or greater.

Only two levels of emission limitation were evaluated and considered in the selection of the proposed control requirements. These alternatives were the emission level associated with the transfer rack component of the sourcewide floor and the level associated with control of all transfer racks. To simplify the consideration of control alternatives, the emissions and cost information for the two groups of racks were combined. After considering the emission reductions, costs, and other impacts of the alternatives, EPA believes that the level of emission limitation associated with the component of the source-wide floor is achievable.

The more stringent level of emission reduction is not being proposed because the additional emission reduction achieved is not significant and the cost of this reduction is high. Control beyond the level associated with the source-wide floor would reduce emissions from transfer racks by less than 70 Mg/yr (77 tons/yr) at a cost of $3.4 million/yr. The average cost effectiveness of this control is $54,000/Mg ($49,000/ton).

As with the decisions on the other emission points, no non-air quality health impacts were expected from any of the alternatives and the other environmental impacts did not vary significantly among the alternatives. Thus, these considerations did not affect the choice of the proposed requirements. The controls required by the proposed requirements are not expected to create any significant secondary emissions of carbon monoxide or nitrogen oxides. In addition, no secondary benefits of co-control of non-HAP VOC's are expected. The energy impacts for the required controls are also not believed to be significant.

f. *Transfer operations: New sources.* **The analysis of the data base showed that the maximum degree of emission reduction being achieved by the best controlled transfer rack occurs at vapor pressures of 10.3 kPa (1.5 psia) and throughputs greater than or equal to 0.65 million *l*/yr (0.17 million gal/yr). Thus, for new sources the transfer rack component of the source wide floor is identical to that for existing sources.**

The decision on the control requirements considered the same two levels of emission limitation that were considered for transfer racks at existing sources. For the same reasons discussed earlier, EPA is not proposing to require a more stringent level of emission reduction. After considering emission reductions and other information, EPA believes that the level of emission limitation associated with the component of the source-wide floor is achievable.

g. *Process wastewater: Existing sources.* The parameters used in the analysis of the data base to identify the floor level of control for wastewater streams were: Concentration of chemicals with high volatility in wastewater (e.g., benzene or vinyl chloride); concentration of chemicals with lower volatilities than benzene, or semivolatile HAP's; and flow rate. These parameters were used because they are among the primary factors that most influence air emissions from wastewater streams.

As previously noted, EPA used data on the control requirements in existing State and Federal regulations to identify streams that must be controlled and to identify the required controls. The only controlled wastewater streams in the data base were those estimated to meet the applicability requirements of either the Vinyl Chloride NESHAP, 40 CFR part 61, subpart F, or the Benzene Waste Operations NESHAP, 40 CFR part 61, subpart FF. There are no State regulations requiring control of air emissions from wastewater. Consequently, the procedure used in the analysis of the existing control level for wastewater operations was to determine the proportion of processes and wastewater streams that have concentrations above the control criteria in the Benzene Waste NESHAP or Vinyl Chloride NESHAP (greater than 10 ppm benzene or vinyl chloride) compared to the total number of processes and wastewater streams. The estimate of the number of processes and benzene containing wastewater streams subject to the Benzene Waste NESHAP was adjusted by the expected proportion of the facilities exceeding the facility-wide threshold for control. This analysis showed that fewer than 5 percent of SOCMI processes and fewer than 3 percent of the wastewater streams are currently controlled to the efficiency of the reference control technology. Therefore, since less than 12 percent of existing wastewater streams are controlled, the component of the source-wide floor for existing wastewater streams (Option 0) is estimated to be no control.

The EPA considered alternative levels of emission reduction that varied from controlling those process wastewater streams that are larger and more cost effective to control to controlling all wastewater streams. The EPA is proposing to require control of process wastewater streams with greater than or equal to 10 *l* pm flow rate and greater than 1000 ppmw total VOHAP concentration (Option 1). The proposed control level was selected considering the emission reductions of the alternative control options and the criteria enumerated in section 112(d) of the Act. The proposed alternative is considered to achieve the maximum emission limitation that is achievable considering cost, non-air quality health and environmental impacts, and energy requirements. Although EPA is proposing this specific option, commenters should be aware that there are a number of technical issues regarding the emission and cost estimation methodologies. (These issues are discussed in section VII.E.3 of this notice.) The EPA anticipates that for wastewater controls there may be changes in the emission and cost estimates that result from the resolution of the technical and scientific issues and any new information received during the public comment period. The final rule will be based on consideration of the revised estimates. The considerations of the currently available information on the alternative control options are summarized below.

Wastewater streams at existing sources are believed to be the second largest contributor of HAP emissions from the emission points regulated by the HON. The proposed control requirements are expected to achieve an emission reduction of 82,100 Mg/yr (90,300 tons/yr) of HAP's compared to current emission levels for the well characterized processes. This represents an 84 percent reduction from the uncontrolled emission rate. The annual cost to achieve this reduction is $23.9 million. The cost-effectiveness of going from no control to the proposed control is $290/Mg ($265/ton) for the well characterized processes.

The estimated costs of the proposed wastewater control requirements are based on use of steam strippers to control the wastewater stream and do not reflect any potential cost savings from use of the other means of demonstrating compliance that are provided in the wastewater provisions. One of these compliance options allows a source to demonstrate compliance through use of pollution prevention measures and waste treatment to change the wastewater stream characteristics. This compliance option is expected to lower the cost of compliance for some sources. Thus, EPA believes that the cost analysis may overstate the cost of complying with the proposed wastewater provisions. Industry representatives have indicated that they believe the cost estimates to be understated. The EPA requests comments on whether the costs of the proposed control requirements are reasonable and asks that commenters provide supporting information for their estimates.

The non-air quality health impacts as well as the energy and other environmental impacts of the alternative control levels were also considered in the selection of the proposed requirements. No non-air quality health impacts were expected from any of the alternatives and the energy and other environmental impacts did not vary significantly among the alternatives. Thus, these considerations did not affect the choice of the proposed requirements. The energy impacts estimated for the selected control requirements were about 4,000,000 kW-hr/yr for electricity and 3,600,000 million Btu/yr for steam. The energy required for the most stringent control level was only slightly greater for electricity and steam. These energy requirements represent a small percentage of the total energy requirement for this industry. Based on previous studies of SOCMI, no unreasonable adverse energy impacts are expected from any of the alternative control levels considered.

While EPA could not quantify the non-air quality benefits, EPA considers control of wastewater streams to result in non-air quality benefits. These benefits include generation of less hazardous waste, less groundwater contamination, and less contamination of stormwater.

An additional air quality benefit considered in the selection of the proposed alternative is that SOCMI wastewater streams also can contain non-HAP VOC's. These non-HAP VOC's will be controlled when streams are controlled for HAP emissions. This control is expected to significantly reduce emissions of non-HAP VOC's, which in specific locations may contribute to efforts to reduce tropospheric ozone.

Alternative control Options 2 through 4 were not selected because the additional emission reduction achieved through further control was not significant, given the costs and the uncertainty regarding the characterization of SOCMI wastewater systems. Specifically, control of wastewater streams with flows of 5 *l* pm or greater and concentrations of 800 ppmw VOHAP (Option 2) was estimated to result in about 700 Mg/yr (770 tons/yr) additional reduction at a cost of about $1.8 million/yr. This control option has a cost-effectiveness value of $2,600/Mg ($2,400/ton). Options 3 and 4 achieve only a small additional emission reduction at cost-effectiveness values of $4,200/Mg to $21,000/Mg ($3,800/ton to $19,000/ton). Given the technical uncertainties that exist regarding the representation of SOCMI wastewater streams and industry practices in design of wastewater collection and treatment systems, it is uncertain whether any of the alternative control options considered would result in additional emission reductions. Therefore, EPA is not proposing any options more stringent than Option 1.

h. *Process wastewater: New sources.* The analysis of the data base also showed the maximum emission reduction being achieved is determined by the control requirements for the Benzene Waste Operations NESHAP and the Vinyl Chloride NESHAP. Under these rules, wastewater streams with 10 ppmw or greater and flow rates greater than 0.02 *l* pm have to be treated prior to discharge and units in which waste is managed before treatment must be equipped with 95 percent efficient air emission controls. This emission limitation was assumed to be equally applicable to other chemicals that have volatilities in water equal to or greater than benzene and vinyl chloride. These chemicals, which are termed VVHAP, are listed in Table 8 of the proposed Subpart G. As previously noted, there are no State or Federal regulations that would require control of chemicals other than benzene or vinyl chloride. Therefore, there is no control at the floor for chemicals with volatilities lower than that of benzene or vinyl chloride. In the determination of the source-wide floor component for new sources, wastewater streams containing 10 ppmw, or more, of VVHAP would be required to be controlled to the efficiency of the reference technology and chemicals with lower volatilities would not.

The EPA developed alternative control options for process wastewater streams at new sources by first considering whether to require control beyond the floor component for VVHAP containing streams (Option 1) and then considering control options for lower volatility chemicals in wastewater streams. No alternatives were developed for further control of VVHAP since the potential additional emission reduction for VVHAP was minimal. For the less volatile chemicals, EPA examined several alternative options. Table 6 shows the emission reductions and costs associated with the floor control for VVHAP combined with the emission reduction and costs for control of total VOHAP concentrations of either 1,000 ppmw (Option 2) or 5 ppmw (Option 3). After considering the alternatives and the associated impacts, EPA is proposing the control requirements in Option 2. The proposed control requirements for new source wastewater streams would apply to 3 sets of streams: streams with flow rates of 0.02 *l*pm or greater and concentrations of 10 ppmw or greater of VVHAP (as defined in Table 8 in § 63.132 of subpart G); streams with flow rates of 10 *l*pm or greater and concentrations of 1000 ppmw or greater of VOHAP (as defined in Table 9 of § 63.138 of subpart G); and all streams with concentrations of 10,000 ppmw or greater of VOHAP. The proposed control level was selected considering the emission reduction achieved by the alternative control options for VOHAP emissions and considering the criteria enumerated in section 112(d) of the Act. The proposed alternative is considered to achieve the maximum emission reduction considering the cost, non-air quality health effects, environmental impacts, and energy requirements. The considerations of these factors and the uncertainties in the estimates are described below.

The proposed control requirements are estimated to achieve a reduction of 15,900 Mg/yr (17,500 tons/yr) of VVHAP and VOHAP compared to emissions in absence of this rule. This represents an 86 percent reduction from uncontrolled emission rates for wastewater. The annual cost to achieve this reduction is about $6.9 million. As noted in the discussion of the proposed control for existing wastewater streams, there is uncertainty whether the costs are understated or overstated.

Option 2 is estimated to achieve an emission reduction of about 3,000 Mg/yr (3,300 tons/yr) of VOHAP emissions above the floor. This control would have cost of about $1.8 million/yr and a cost-effectiveness value of $600/Mg ($540/ton).

In selecting Option 2 for the proposed control requirements, EPA also considered the non-air quality health effects as well as the energy requirements and other environmental impacts. The consideration of these criteria was similar to that in the selection of controls for existing wastewater streams. No non-air quality health impacts were expected from any of the alternatives. In comparing the alternatives, EPA found that the environmental and energy impacts did not vary significantly among the alternatives. The energy and secondary impacts from the control devices were not considered significant.

The proposed control requirements are expected to have secondary non-air quality benefits such as reduced potential for groundwater contamination. The selected alternative is estimated to result in control of about 30 percent of the total wastewater volume from new SOCMI sources.

The EPA is not proposing a more stringent level of emission limitation because control beyond the selected level is estimated to achieve only a small additional emission reduction. The further control would reduce emissions by an additional 1,000 Mg/yr (1,100 tons/yr) of VOHAP. This control would cost about $20 million per year, an increase of about $13 million per year over the cost of the proposed control level. Because the cost is disproportionately large compared to this additional emission reduction and the great uncertainties regarding the potential emission reduction, EPA is not proposing the more stringent control option.

B. Selection of Process Vents Provisions

1. Selection of Format

The format chosen for process vent streams is dependent upon the control device selected. For vent streams controlled by control devices other than flares, the format is a combination of a weight-percent reduction and an outlet concentration. A weight-percent reduction format is appropriate for streams with HAP concentration above 1000 ppmv because such a format ensures that the stream will meet the reference control technology requirements. For process vents with concentrations below about 1000 ppmv, a 20 ppmv outlet concentration was selected because 98 percent reduction may not be achievable. Further details on selection of this format are presented in the proposal preamble for the SOCMI reactors NSPS (55 FR 26953, June 29, 1990).

The combustion of vent streams containing halogenated organic compounds can produce emissions of halogens and hydrogen halides, some of which are HAP's, such as hydrogen chloride, chlorine, and hydrogen fluoride. To reduce these emissions, the proposed standard requires the use of a scrubber after the combustion device for halogenated process vent streams. The format of the standard for such scrubbers is a percent reduction or outlet concentration of those halogens and hydrogen halides that can be measured using the EPA Method 26 or Method 26A. A percent reduction format ensures that most streams will meet the reference control technology requirements. However, an alternative outlet concentration level is needed for low concentration streams where the specified percent reduction would result in outlet levels too low to measure.

For vent streams controlled by a flare, the proposal includes equipment and operating specifications because it is very difficult to measure the emissions from a flare to determine its efficiency.

2. Selection of Group Determination Procedures, Performance Tests, Monitoring Requirements, and Test Methods

The standard specifies the group determination procedures, performance tests, monitoring requirements, and test methods necessary to determine whether a process vent stream is required to apply control devices and to demonstrate that the allowed emission levels are achieved when controls are applied. As with the format of the process vent provisions, these requirements are dependent on the control device selected.

a. *Group determination procedures.* Each owner or operator would be required to follow group determination methods and procedures to determine whether the vent is a Group 1 or Group 2 process vent or comply directly with the requirement to reduce organic HAP emissions by 98 weightpercent or to an outlet concentration of 20 ppmv through use of a control device. There are three group determination procedures: (1) Process vent flow rate measurement, (2) process vent HAP concentration measurement, and (3) TRE index value determination. The specific test methods for these three determinations are described under section VII.B.2.c "Test Methods" of this notice.

Process vents with a flow rate less than 0.005 scm/min are considered Group 2 process vents. Vent streams with flow rates less than 0.005 scm/min are expected to have a TRE greater than 1.0. The flow rate measurement would allow sources with very low flows a less burdensome way to determine if they are Group 2 (instead of performing a TRE calculation).

Process vents with a HAP concentration less than 50 ppmv are considered Group 2 process vents. Vent streams with organic HAP concentrations less than 50 ppmv are expected to have a TRE greater than 1.0. The HAP or TOC concentration measurement using Method 18 or 25A (instead of performing a TRE calculation) would allow sources with very low organic HAP concentrations a less burdensome way to determine they are Group 2.

An analysis using the HON TRE equation and model process vent stream characteristics in the HON data base showed that process vents with flow rates or HAP concentrations below these levels would have TRE index values above 1.

Process vents with a TRE index value greater than 1.0 are considered Group 2 process vents. The TRE index value can be calculated by using inputs derived from engineering assessment (including process knowledge) or test method measurements. The inputs to the equations are the HAP and TOC concentrations, the net heating value, and the flow rate of the vent stream. If the TRE index value calculated using engineering assessment is greater than 4.0, then the owner or operator would not be required to measure stream characteristics.

The TRE of 4.0 was selected by considering the uncertainty of the engineering assessment of the inputs to the TRE equation and process variability. If a TRE index value is calculated to be above 4.0, it was determined that it is very unlikely that either uncertainties in estimating inputs to the equation or normal process variations could cause the actual TRE index value to be below 1.0. Therefore, the vent can be considered Group 2 without making measurements. However, engineering assessment procedures must meet the specifications in the regulation and must be fully documented in order to assure that the TRE calculation is acceptable.

If the TRE index value is less than 4.0, testing using the appropriate flow rate method and Method 18 is required to determine flow rate, HAP and TOC concentrations, and net heating value for input to the TRE equation.

b. *Performance test.* Initial performance tests are required for all control devices other than flares and certain boilers and process heaters. Specifically, testing would be required for: (1) Incinerators, (2) scrubbers used with combustion devices to control halogenated vent streams, and (3) some boilers and process heaters smaller than 44 MW (150 million Btu/hr). Performance tests: (1) Ensure that a control device can achieve the required control level and (2) help establish operating parameters that are indicative of proper operation and maintenance.

An initial performance test is not required for boilers and process heaters larger than 44 MW (150 million Btu/hr) because they operate at high temperatures and residence times. Analysis shows that when vent streams are introduced into the flame zone of these boilers and process heaters, over 98 percent reduction or an outlet concentration of 20 ppmv is achieved. Therefore, a performance test is not necessary. This is more fully explained in the proposal notice for the SOCMI reactor processes NSPS (55 FR 26966, June 29, 1990). Unlike the proposed SOCMI reactor processes NSPS, the proposed HON would not require a performance test for boilers that mix the vent stream with the primary fuel to a boiler or process heater because available information shows that in such situations boilers and process heaters achieve 98 percent control or better.

Because percent reduction and outlet concentration cannot feasibly be measured at flares, the flare must meet the requirements in § 63.11 for operating conditions.

c. *Test methods.* The proposed process vent provisions would require the use of approved test methods to ensure consistent and verifiable results for group determination procedures, initial performance tests, and compliance demonstrations. Performance tests are required to demonstrate compliance for control devices other than flares and certain boilers and process heaters. For group determination, Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A is specified for measuring vent stream flow rate (prior to combustion).

Also, Method 18 or 25A of 40 CFR part 60, appendix A is specified for measuring total vent stream HAP or TOC concentration to determine whether HAP concentration is below 50 ppmv. Method 18 measures individually-speciated organic compounds. Method 25A measures total organic compound content of the vent stream and does not speciate organic HAP; thus, it includes any methane and ethane in the vent. Method 25A may be used only if a single organic HAP compound is greater than 50 percent of the total organic HAP in the vent stream and that HAP compound is used for calibration. In addition, if Method 25A is used, TOC must be below 25 ppmv (instead of 50 ppmv as in Method 18) for a vent to be considered Group 2. A safety factor of 2 is being applied because the method will measure the HAP to which it is calibrated, but could under-estimate other HAP's in the vent stream. Method 18 is specified for measuring TOC and HAP concentrations for use in the TRE equation because concentrations of individually-speciated organic compounds are needed to calculate the net heating value for input to the TRE equation.

In order to determine whether a vent stream is halogenated and to calculate TRE, Method 18 is specified for measuring speciated halogenated organic compounds. The total vent stream concentration of total halogen atoms shall be summed from the individual halogen atoms in each organic HAP compound based on the molecular formula of the compound and the concentrations of the compounds containing halogens. For example, 150 ppmv of ethylene dichloride would contain 300 ppmv of total halogen atoms. Process knowledge that no halogenated compounds are present is acceptable for determination that a vent stream is not halogenated. Method 26 or proposed Method 26A is specified for measuring halogens and hydrogen halides from scrubbers following combustors. Proposed revisions to Method 26 and the proposed addition of Method 26A to 40 CFR part 60, appendix A are discussed in a separate notice in this issue of the **Federal Register**.

In order to allow owners or operators greater flexibility, the proposed provisions also allow the use of any test method or test results validated according to the protocol in Method 301 of 40 CFR part 63, appendix A.

The EPA considered allowing Method 25A as an alternative to Method 18 for demonstrating compliance of control devices applied to process vents; however, Method 25A is not included as an alternative for demonstrating compliance with the emissions reduction or control device outlet concentration in the proposed rule. The basis for the decision was that the EPA determined that the results obtained with Method 25A would not consistently demonstrate HAP control efficiency. Process vent streams often contain mixtures of multiple organic HAP's and other organic compounds. The TOC measurements obtained with Method 25A would vary depending on how the method is calibrated because response factors for individual compounds vary. Furthermore, some compounds such as formaldehyde and halogenated compounds are not well detected by Method 25A. Another concern is that the relative proportion of individual organic compounds may change across the combustor. Therefore, specifying calibration with the principal HAP in the inlet would not necessarily produce reliable results.

The EPA requests comments and data on whether the use of Method 25A would provide accurate measurements of TOC control. In particular, EPA requests comment on the two following procedures for using Method 25A:

Procedure I:

a. Calibrate Method 25A with the primary organic HAP constituent (i.e., greater than 50 percent of the total organic HAP by volume) at the control device inlet;

b. Measure greater than 99 percent TOC reduction (to be more conservative, as opposed to 98 percent reduction measured by Method 18) *or;*

c. Measure less than 10 ppmv TOC concentration at control device outlet (to be more conservative, as opposed to 20 ppmv measured by Method 18).

Procedure II:

a. Calibrate to propane;

b. Measure 99 percent reduction or 10 ppmv TOC at outlet.

The EPA also requests comments and data on other potential test methods or procedures that would provide accurate TOC reduction measurements. In particular, data comparing vent stream composition at the inlet and outlet of combustion devices are requested. Data comparing results of Method 25A and Method 18 tests for combustion of vent streams composed of multiple organic compound mixtures are requested.

d. *Monitoring.* Control devices used to comply with the proposed standard need to be maintained and operated properly if either a 98 percent reduction or reduction to an outlet concentration of 20 ppmv is to be achieved on a continuing basis. Monitoring of the control device operating parameters can be used to ensure that such proper operation and maintenance are occurring.

The proposed standard lists the parameters that can be monitored for the common types of combustion devices: Thermal incinerators; catalytic incinerators; boilers and process heaters; and flares. These parameters were selected because they are good indicators of combustion device performance, and instruments are available at a reasonable cost to continuously monitor these parameters. These parameters are generally the same as those required by the reactor processes, air oxidation, and distillation NSPS. The rationale for their selection is fully explained in the proposal notice for the SOCMI reactor processes NSPS (55 FR 2966–26968, June 29, 1990). The proposed rule also allows the owner or operator to request to monitor other parameters on a site-specific basis.

The proposed standard would require the owner or operator to establish site-specific parameter ranges through the Notification of Compliance Status report and operating permit. Site-specific parameter ranges accommodate site-specific differences in control design and process vent stream characteristics. The EPA requests comment and data on whether an alternative range or minimum value of monitored parameters should be set and, if so, what the values should be.

Unlike the proposed SOCMI reactor processes NSPS, the proposed HON would not require monitoring of boilers and process heaters of 44 MW (150 million Btu/hr) or greater or of boilers and process heaters below 44 MW (150 million Btu/hr) that introduce the process vent stream as a primary fuel or mix it with the primary fuel and introduce it through the same burner. This decision was made because the burning characteristics of these units generally ensure a 98 percent reduction in the organic content of the process vent stream.

The proposed rule also specifies monitoring requirements for scrubbers installed to remove halogens and hydrogen halides from the combustor outlet.

For Group 2 process vent streams that have TRE index values greater than 1.0 but less than or equal to 4.0, monitoring of the final recovery device would be required to ensure that it continues to be operated as it was during the group determination test when the initial TRE index value was calculated. Improper recovery device operation and maintenance could lead to increased organic HAP concentration, potentially reducing the TRE index value below 1.0, and causing the vent to become a Group 1 process vent. Continuous monitoring will ensure continued good performance of recovery devices. The TRE index value monitoring level of 4.0 is being proposed because the variability of the process parameters established during normal operating conditions are unlikely to vary to the extent that a TRE value above 4.0 would be reduced to a TRE level less than 1.0 and thus require control.

The proposed standard specifies the parameters that can be monitored for the three common types of recovery devices: absorbers, condensers, and carbon adsorbers. These parameters were selected because they are good indicators of recovery device performance, and instruments are available at a reasonable cost to continuously monitor these process parameters. These monitoring parameters are the same as those already required by the reactor processes, air oxidation, and distillation NSPS. The rationale for their selection is fully explained in the proposal notice for the SOCMI reactor processes NSPS (55 FR 26968–26969, June 29, 1990). The proposed rule also allows the owner or operator to request to monitor parameters on a site-specific basis. The owner or operator would establish a site-specific range for the parameters through the Notification of Compliance Status report and operating permit.

C. Selection of Storage Vessel Provisions

1. Selection of Format

For Group 1 storage vessels, the storage vessel provisions require control by: (1) Tank improvements (internal or external floating roofs with proper seals and fittings) or (2) a closed vent system and control device. The format for the storage vessel provisions is dependent upon the control device selected. For storage vessels controlled by internal or external floating roofs, the format is a combination of design, equipment, work practice, and operational standards because all of these are necessary to ensure that the vessel will meet the reference control technology requirements. The EPA chose not to propose an emission limit format for storage vessels because that would require equipping each vessel with a capture system; the corresponding costs would be prohibitive.

The design requirements for vessels controlled with tank improvements are five different equipment configurations specified in the rule. Additional operational and work practice requirements, which consist of inspection and repair requirements, are necessary to ensure the continued integrity of the control equipment.

For vessels controlled by a closed vent system and control device, EPA is proposing a design and equipment format. This format accommodates the wide variation in emissions and flow rates being vented from the vessel, and requires that the closed vent system and control device meet the reference control technology requirements.

The closed vent system must be capable of collecting HAP vapors and gases discharged from the storage vessel.

The control device must reduce the HAP emissions discharged into it at an efficiency of at least 95 percent by weight and must be operated to achieve this level of emission reduction. Operational requirements, which consist of, among other things, inspection, repair, and work practice requirements, are necessary to ensure the proper operation and integrity of control equipment meeting a design and equipment standard.

2. Selection of Compliance Provisions

The proposed storage vessel provisions require control by tank improvements or a closed vent system and control device; however, the choice of control technologies is limited depending on the material stored. For vessels storing liquids with vapor pressures less than 76.6 kPa, either control option may be selected. However, for vessels storing liquids with vapor pressures greater than or equal to 76.6 kPa, tank improvements do not achieve the expected level of emission reductions. As a result, Group 1 storage vessels containing liquids with a maximum true vapor pressure of organic HAP's greater than or equal to 76.6 kPa must be controlled with a closed vent system and control device. Tank improvements would not be allowed as the reference control technology for these vessels.

Compliance provisions in the proposed rule are dependent upon the control device selected. The following discussion separately addresses the provisions for internal floating roofs, external floating roofs, and closed vent systems and control devices.

a. *Internal floating roof vessels.* After a vessel is filled, it is impossible to accurately ascertain the condition of the primary seal. Additionally, most repairs cannot be performed on an internal floating roof that is in service. For these reasons, for storage vessels at new sources, the proposed standards would require the owner or operator to inspect and report the condition of the internal floating roof, seals, and other required equipment before placing the storage vessel in service.

Because internal floating roofs and seals can fail, resulting in an increase in emissions, owners and operators are required to inspect each storage vessel at new and existing sources periodically and to repair any failures. If failures are detected during an inspection, the vessel must be repaired or emptied within 45 days. This 45-day limit was selected because survey data indicated that most facilities could empty a storage vessel having equipment in need of repair within 45 days. In addition, two 30-day extensions may be requested from the Administrator.

As with the previous NSPS for storage vessels and the benzene NESHAP, two types of inspections are required by the proposed rule: (1) Visual inspection of the internal floating roof and seals through the manholes and roof hatches on the fixed roof (i.e., by an observer or television monitor); and (2) internal inspection of the internal floating roof, seals, and deck fittings of a vessel that has been emptied and degassed. To allow flexibility, the proposed rule includes two different schedules for inspections. The first schedule would require a visual inspection at least once every year and an internal inspection at least once every 10 years. The second schedule, which may be used only if a secondary seal is in place, would require an internal inspection at least once every 5 years but would not require annual visual inspections.

The owner or operator may find it necessary on occasion to empty and degas a storage vessel for reasons other than equipment inspections (e.g., to repair a failure detected during an annual visual inspection). In order to further reduce the emissions due to degassing for inspections, the proposed rule allows an internal inspection any time a storage vessel is degassed for any purpose. The date of this inspection would become the beginning of the 5- or 10-year time period before the next required inspection.

b. *External floating roof vessels.* As described in section VII.C.2.a for the internal floating roof vessels, the proposed provisions for the external floating roof storage vessels at new sources would require the owner or operator to inspect and report the condition of the seal system of the external floating roof before placing the storage vessel in service.

In order to ensure the continued effectiveness of external floating roof controls, EPA is proposing the following requirements. The owner or operator must: (1) Measure the seal gaps in both the primary and secondary seals within 90 days of introducing HAP's into the vessel; (2) measure the primary seal gap once every 5 years; and (3) measure the secondary seal gap once every year. In addition, the proposed rule requires that the vessel be visually inspected each time the vessel is emptied and degassed because any failures in the seals would have to be repaired before the vessel is refilled.

Whenever seal gaps exceed the limits specified in the rule, the owner or operator would be required to repair the seal or empty the vessel within 45 days unless an extension is granted. However, the proposed rule would allow delay of the seal gap measurement if the owner or operator determined that the floating roof was structurally unsound and that it would be unsafe to conduct the inspection. To minimize the potential for an increase in emissions, the proposed rule would require that the inspection be performed within 30 days of the determination that the roof is unsafe or that the vessel be emptied within 45 days of the determination. In addition, two 30-day extensions for emptying the vessel may be requested from the Administrator.

c. *Closed vent systems and control devices.* To enable EPA to determine compliance with the requirements for the closed vent system and control device, the proposed rule requires the owner or operator to submit plans and specifications for the system to the EPA as part of their Implementation Plan. In addition, because closed vent systems and vapor control devices are also subject to failures or improper operation, the proposed standard requires periodic inspection of closed vent systems for leaks.

Many failures can be detected by regular inspection of operational parameters. Therefore, the proposed standard requires the owner or operator to monitor those operational parameters that would indicate that the device is operating properly. To ensure the integrity of the closed vent system and control device, the proposed standard also requires that inspections for leaks greater than 500 ppm be performed during filling of the vessel and at least once per year. Leaks must be repaired no later than 15 days after being detected. However, repair of the leaks may be delayed until the next process unit shutdown if the owner or operator demonstrates in a report to the Administrator that the repair is technically infeasible without a process unit shutdown or that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair.

D. Selection of Transfer Loading Operations Provisions

1. Selection of Format

For Group 1 racks, the transfer provisions require vapor collection and control. The format for the provisions for vapor collection systems includes equipment design and work practice standards to ensure that the HAP-containing vapors are collected and routed to the control device or vapor balancing system. To ensure vapors are captured by the collection system and are not lost to the atmosphere through leaks in the vehicle, the provisions include a work practice standard requiring owners and operators of transfer racks subject to control to load organic HAP's only into tank trucks and railcars that are DOT certified or are vapor tight.

The format of the proposed provisions for control devices depends upon the control device selected. For streams controlled by control devices other than flares, the format is a combination of a weight-percent reduction and an outlet concentration. A weight-percent reduction is required for streams with HAP concentration above 1000 ppmv because such a format ensures that the stream will meet the reference control technology requirements. As mentioned in Section VII.B, "Selection of Process Vents Provisions," the 20 ppmv level is needed as an alternative format for sources with inlet organic HAP concentrations below about 1,000 ppmv. These streams may not be able to achieve 98 percent control, but can achieve an outlet concentration of 20 ppmv.

As with process vents, scrubbers are required to remove halogens and hydrogen halides from combustor outlet streams when streams containing halogenated compounds are combusted. The format for the scrubber compliance is a combination of percent reduction and an outlet concentration limit.

For streams controlled by a flare, an equipment standard with stated equipment and operating specifications is being proposed as the format because it is very difficult to measure the emissions from a flare to determine its efficiency.

For vapor balancing systems, an equipment and work practices standard is being proposed. Vapor balancing systems are required to return emissions from transfer operations back to the storage vessel from which the liquid being transferred originated. If the vapor balancing system is properly operated and inspected for leaks, there should be virtually no emissions from a vapor balancing system. Thus, the proposed provisions require that the system be inspected annually for leaks.

2. Selection of Performance Tests, Monitoring Requirements, and Test Methods

a. *Initial performance test.* Performance tests: (1) Ensure that a control device applied to a Group 1 rack can achieve the required control level and (2) establish operating conditions under which the device should continue to achieve the required level of control. For these reasons, an initial performance test would be required for all control devices except: (1) Flares; (2) boilers and process heaters with design heat input capacities of 44 MW (150 million Btu/hr) or greater; and (3) boilers and process heaters with design heat input capacities less than 44 MW that introduce the process vent stream as a primary fuel or mix it with the primary fuel and introduce it through the same burner. A discussion of the rationale for excluding flares and boilers and process heaters is presented in the discussion of process vents, section VII.B.2 of this preamble.

Because the format for the provisions for vapor balancing systems includes equipment design and work practice standards, a performance test is not required. A vapor balancing system inherently prevents emissions to the atmosphere. The requirement for annual leak detection and repair ensures that fugitive emissions from the system will be minimal.

As described in § 63.128 of subpart G, a performance test measuring the percent reduction or outlet concentration would not be required for streams controlled by a flare. However, the flare must comply with § 63.11 which includes a compliance determination according to Method 22 of 40 CFR part 60, appendix A, and design specifications for velocity and heat content.

The EPA attempted to specify a performance test duration that would provide a representative test period to measure control device performance and establish monitoring parameter ranges. Emissions and control performance may vary over the filling cycle and over the control device cycle where intermittent vapor processing systems are used. Intermittent vapor processing systems are systems that have a vapor holder to accumulate vapors and treats the vapors during automatically controlled cycles. It was considered that filling duration, filling frequency, and control device cycle duration will be different from facility to facility. The performance test period should be long enough to obtain representative results, but short enough that the test is not unduly burdensome for the source. The proposed performance test duration is three filling periods for continuous vapor processing systems; and three control device cycles for intermittent vapor processing systems. The EPA requests comments or suggestions with supporting data and/or rationale on the proposed performance test duration.

b. *Test methods.* The proposed standard requires the use of approved test methods to ensure consistent and verifiable results for initial performance tests and compliance demonstration.

The transfer provisions allow the use of either Method 18 or Method 25A for compliance with the percent reduction and outlet concentration. Method 25A is proposed as a method for determining emissions from transfer racks but not process vents because emission characteristics make this method more appropriate for transfer operations. Transfer operations typically load products of known composition. One, or at most a few, organic HAP's would be routed to the control device at one time. Therefore, Method 25A can be calibrated to the specific organic HAP being controlled and will provide a reliable measurement of control device inlet and outlet emission levels. This is in contrast to the situation described in Section VII.B.2 for process vents containing complex mixtures of several organic compounds. However, EPA requests comments and data on the accuracy and use of these methods for transfer operations and any data comparing the Method 25A results to Method 18 results.

As with process vents, Method 26 or proposed Method 26A is specified for measuring halogens and hydrogen halides from scrubbers following combustors. Proposed revisions to Method 26 and the proposed addition of Method 26A to 40 CFR part 60, appendix A are discussed in a separate notice in this issue of the **Federal Register**.

The proposed rule also allows the use of any test method or test results validated according to the protocol in Method 301 of 40 CFR part 63, appendix A to allow owners or operators greater flexibility.

c. *Vapor tightness testing.* The proposed transfer provisions require that organic HAP's be loaded only into vehicles that are DOT certified, or vehicles that have been determined to be vapor tight to ensure that emissions generated during loading are captured. Previous regulations required vapor tightness testing for tank trucks and railcars according to Method 27 of 40 CFR part 60, appendix A. This requirement was reconsidered for the HON in light of updated DOT regulations. In order to decrease the burden to SOCMI facilities and to tank truck and railcar owners, the proposed rule allows either DOT certification in accordance with pressure test requirements of 49 CFR 180 for tank trucks and 49 CFR 173.31 for railcars, or vapor tightness testing according to Method 27.

d. *Monitoring.* The proposed standard lists the parameters that must be monitored for the common types of control devices (i.e., thermal incinerators, catalytic incinerators, flares, boilers, process heaters, absorbers, condensers, and carbon adsorbers). These parameters were selected because they are good indicators of combustion or recovery device performance, and instruments to monitor these parameters at the frequency required are available at a reasonable cost. The rationale for their selection is fully explained in the proposal notice for the SOCMI reactor processes NSPS (55 FR 26966–26969, June 29, 1990). The proposed rule also allows the owner or operator to request to monitor other parameters on a site-specific basis.

The proposed standard would require the owner or operator to establish site-specific parameter ranges through the Notification of Compliance Status report and operating permit. Site-specific parameter ranges accommodate site-specific differences in control design and vent stream characteristics. The EPA requests comment and data on whether an alternative range or minimum value of monitored parameters should be set and, if so, what the values should be.

In previous rules, the frequency of monitoring parameters has been linked to the duration of the loading cycle. In order to give flexibility, the proposed HON rule gives owners and operators a choice whether to link the monitoring frequency to duration of loading cycle or length of time the control device is operating. If the owner or operator decides to base the monitoring program on the duration of the loading cycle, measurements would have to be made every 15 minutes for loading cycles of 3 hours or more and measurements would have to be made every 5 minutes for loading cycles less than 3 hours in duration. If the owner or operator decides to base the monitoring program on the length of time the control device is operating, measurements would have to be made every 15 minutes for control device operating periods of 3 hours or more, and measurements would have to be made every 5 minutes for control device operating periods less than 3 hours in duration. The monitoring frequency option chosen must be recorded in the Notification of Compliance Status report.

For vapor balancing systems, the proposed provisions require an annual visual inspection and a test using Method 21 of 40 CFR part 60, appendix A. The purpose of these provisions is to ensure that there are no leaks in the vapor balancing system.

E. Selection of Wastewater Collection and Treatment Operations Provisions

1. Selection of Format

The provisions for controlling air emissions from Group 1 wastewater streams are a combination of equipment, operational, work practice, and emission standards. The rationale for choosing the format of these provisions is discussed below.

a. *Transport and handling equipment.* Several formats were considered in developing the proposed provisions for transport and handling equipment. These formats included a numerical emission standard, and an equipment standard with the work practices necessary to ensure proper operation and maintenance of the equipment.

Although considered first, it was determined that a numerical standard would not be feasible because it would be difficult to capture and measure emissions from this equipment for the purpose of evaluating compliance. Due to the number of openings and possible emission points, accurate measurement would require enclosure of the entire airspace around a piece of equipment. This would not be practical for numerous equipment components.

The second format considered was an equipment standard. Since the intent of the standard is to capture all emissions from transport and handling equipment, an equipment standard is appropriate. The best method for controlling emissions is to require the installation and proper maintenance of roofs, covers, lids, and enclosures on vessels and tanks.

Based on the evaluation of these formats, a combination of equipment standards and work practices was selected for transport and handling equipment. The proposed provisions would require that emissions from wastewater transport and handling equipment be controlled from the point of wastewater generation through the treatment system. Equipment used to control emissions would include covers, lids, roofs, and enclosures designed to eliminate emissions. Proper work practices are needed to ensure that the equipment will control emissions. The proposed work practices include periodic monitoring, inspection, and repair provisions. These provisions were selected at action levels designed to minimize emissions, and are consistent with past NSPS and NESHAP standards.

b. *Reduction of volatile organic hazardous air pollutant concentration in the wastewater streams.* Two formats were considered in developing the proposed standards for reduction of wastewater stream VOHAP concentration: a numerical format, and an equipment design and operation format.

Five alternative numerical emission limit formats are proposed to provide sources with a maximum degree of operational flexibility in complying with the provisions. These emission limit formats are: (1) An overall percent reduction for total VOHAP in the wastewater stream (existing sources); (2) percent reductions for individually-speciated HAP's (new and existing sources); (3) an effluent concentration limit for total VOHAP (existing sources); (4) effluent concentration limits for individually-speciated HAP (new sources); and (5) a required mass removal for HAP (new and existing sources). The rationale for providing alternative emission limits based on both a percent reduction and an effluent concentration is given below.

Percent reduction. The percent reduction format is based on the organic HAP removal efficiency of a steam stripper; however, any treatment process that can achieve the proposed efficiency can be used to comply with the standard. This format was chosen because it is the best representation of control technology performance.

A second alternative limit is based on the percent reduction for individually-speciated HAP's. Some HAP compounds have low volatilities and cannot be removed as easily by steam stripping as other compounds. Wastewater streams composed mostly of compounds with low volatility may not be able to achieve the total HAP percent reduction. Therefore, the organic HAP compounds have been grouped by Henry's Law constants into three strippability groups. (Strippability refers to the predicted removal efficiency of a compound using the design steam stripper specified in the regulation.) Target percentage removals for HAP in each group have been developed. Sources may choose to use this alternative emission limit. Because the objective of the proposed regulation is to control air emissions of HAP's from wastewater streams, and not to control HAP's in the wastewater streams, this approach will result in adequate control of air emissions of organic HAP's within the range of volatilities.

Effluent concentration. The effluent concentration limits are also based on the performance of a steam stripper. Effluent concentration limits are provided as alternatives to the percent reduction standard to allow compliance flexibility for facilities required to treat wastewater streams having low organic HAP concentrations. Requiring a percent reduction standard alone for these wastewater streams would not be reasonable. At very low concentrations, it is technically much more difficult and costly to achieve the same level of percent reduction.

Mass removal. Required mass removal is an alternative for combined wastewater streams where Group 1 wastewater streams might be mixed with Group 2 wastewater streams. It is based on the removal performance of a steam stripper for the different strippability groups of compounds. The equations for computing required mass removal are designed to require removal of only the VOHAP concentration contributed by the Group 1 wastewater streams. The mass removal alternative was provided in lieu of concentration limits because concentration limits could be achieved by dilution and, therefore, no emission reduction would occur.

Equipment design and operation. Another regulatory format considered for wastewater stream treatment was an equipment design and operation format. The equipment standard consists of the installation of a steam stripper designed and operated at specified parametric levels. The specifications for the steam stripper were developed to provide a standard piece of equipment (with associated operating conditions) that can achieve greater than 95 percent total HAP removal for most wastewater streams, and greater than 99 percent for streams containing primarily high volatility compounds.

This equipment format was included to provide an alternative means of compliance that all sources would be able to use, while achieving the desired emission reduction. In addition, the monitoring requirements for the design steam stripper require much less effort on the part of the owner or operator. Thus, this equipment design and operation standard provides an alternative with fewer performance testing requirements.

c. *Vapor recovery or destruction devices.* An emission standard is generally appropriate for vapor recovery and destruction devices used to control vapor streams containing HAP from transport, handling, and treatment equipment. The rationale for an emission limit (percent reduction or outlet concentration format) for this equipment was discussed previously in the sections titled "Selection of Format" for process vents and transfer racks.

A weight-percent reduction of 95 percent is proposed for all types of devices except flares. The 95 percent efficiency level will allow the use of product recovery devices, and thus encourage product recovery and pollution prevention. Two alternative formats are also proposed for combustion devices other than flares: An outlet volume concentration of 20 ppmv, or a minimum residence time of 0.5 seconds and a minimum temperature of 760 °C (1400 °F).

For flares, an equipment standard with stated equipment and operating specifications is being proposed as the format because it is very difficult to measure emissions from a flare to determine its efficiency.

2. Selection of Performance Tests, Monitoring Requirements, and Test Methods

a. *Wastewater stream concentration and flow determination.* Two important parameters must be quantified initially and whenever process changes are made to determine whether a process wastewater stream is a Group 1 or Group 2 stream. These parameters are the annual wastewater quantity for a stream and the VOHAP concentration of HAP's in the stream. The VOHAP concentration can be quantified as a flow-weighted annual average for total VOHAP or for individually-speciated HAP's.

Several methods can be used to determine wastewater quantity. These methods include using knowledge about the capacity of the wastewater-generating process or the waste management unit, and using measurements that are representative of maximum annual wastewater generation rates. Knowledge-based methods are allowed to provide flexibility and to provide less expensive alternatives than actual annual measurement if the appropriate information is available.

For quantifying the VOHAP concentration of the wastewater streams, three methods are available: (1) Knowledge of the wastewater streams, (2) bench scale or pilot scale test data, or (3) physical measurements of total VOHAP or individually-speciated VOHAP concentrations. Again, the three methods have been allowed to provide flexibility and to provide less expensive alternatives than actual measurement if the appropriate information is available.

If the actual VOHAP concentration of the wastewater stream is measured, the regulation specifies that the procedures in proposed Method 305 ("Measurement of Individual Volatile Organics in Wastewater"), accompanying this package, must be used. This method is a laboratory test method for the measurement of emission potential of individual volatile organics in wastewater. It is based on a combination of Methods 25D and 18 of 40 CFR part 60, appendix A. Method 305 may be used in conjunction with calculations and procedures outlined in § 63.144 of subpart G to determine VOHAP average concentration.

To allow owners or operators' flexibility, the proposed rule also allows the use of analysis methods which measure organic HAP concentrations in the wastewater streams, in conjunction with Method 301. The concentrations of the individual organic HAP compounds measured in the water may be corrected by multiplying each concentration by the compound-specific fraction measured factor in Table 13 of § 63.144 of subpart G. This procedure will give an estimate of the volatile portion of the HAP which would be measured if the purge-and-trap procedure in proposed Method 305 (or Method 25D) were used. Method 301 provides a protocol for validating the accuracy of any alterative test method chosen by a facility in lieu of the methods specified by the regulation. The proposed rule also specifies procedures for determining the source-wide annual VOHAP loading.

Also being proposed today is Method 304, "Method for the Determination of the Biodegradation Rates of Organic Compounds." This method is a laboratory test method for the measurement of biodegradation rates of organic compounds and the calculation of biodegradation rate constants. Method 304 is required to be used in conjunction with calculations and procedures outlined in § 63.145 of subpart G to demonstrate compliance of properly operated biological treatment units.

b. *Performance tests.* Initial performance tests for control of Group 1 wastewater streams are not required by the proposed rule. For treatment processes and control devices, facilities have the choice of using either performance tests or engineering calculations to demonstrate the compliance of those units with the standards. Engineering calculations, supported by the appropriate documentation, have been allowed to provide a less costly alternative to that of actual testing.

The proposed rule includes treatment process performance test procedures for the effluent concentration, percent reduction, and required mass removal standards. These test procedures involve measurements of total VOHAP concentration or individually-speciated VOHAP concentrations, depending on the standard for which compliance is being demonstrated. Similar to measurements of VOHAP concentration used to determine applicability, these measurements may be made using: (1)

Proposed Method 305 to quantify total VOHAP or individually-speciated VOHAP concentrations, (2) Method 25D alone to quantify VO as a surrogate for total VOHAP, or (3) any other method for which the results are validated using Method 301.

A performance test is not specified for the design steam stripper; installation of the specified equipment, along with monitoring to show attainment of the specified operating parameter levels, demonstrates compliance with the equipment design and operation provisions.

A vent stream control device performance test procedure is also specified by the proposed rule. Method 18 may be used to measure the organic content of the vapor stream entering and exiting the control device. Alternatively, any other method may be used if the results are validated using Method 301.

All transport and handling systems and closed vent systems used to control emissions from them must be evaluated initially and at annual intervals using Method 21 to determine the presence of HAP-containing VOC fugitive emissions. Method 21 incorporates the use of a portable hydrocarbon detector to measure the concentration of VOC's. Method 21 is used to test compliance in several standards in 40 CFR parts 60 and 61 and represents the best available method for detecting fugitive emissions from these sources. The organic compounds measured by the hydrocarbon detector are not necessarily HAP's. However, if HAP's are contained in the transport, handling, and control equipment being tested, Method 21 is the best procedure available for providing an indication of fugitive HAP emissions.

c. *Monitoring requirements.* The proposed process wastewater provisions include requirements for periodic monitoring and inspections to ensure proper operation and maintenance of the control system and continued compliance.

Waste management units. These units are required to be visually inspected semiannually for improper work practices and control equipment failures which may potentially be a source of emissions. The equipment must also be tested annually for the presence of leaks.

Wastewater treatment units. Monthly monitoring of effluent streams or influent *and* effluent streams will be required to ensure compliance with the numerical limits. As an alternative, continuous monitoring of parameters that indicate proper system operation can be used. When continuous monitoring is employed, daily inspection of monitoring records is required.

If the wastewater treatment units used to comply with the provisions has any openings such as doors and hatches, initial and semiannual inspections will be required to verify that the system is being properly operated without emissions. If a design steam stripper is used to comply with the requirements, continuous monitoring of the operating parameters listed in the regulation will be required. Continuous monitoring is necessary to ensure proper operation of the stripper, and therefore maximize emission reductions.

Closed vent systems and control devices. With the exception of a non-regenerative carbon adsorber, continuous monitoring will be required for all control devices. The monitoring equipment, parameters, and frequency of monitoring for each control device are given. Monitoring is necessary to ensure control devices continue to be properly operated and maintained. The parameters were selected because they are good indicators of control device performance, and instruments are available at a reasonable cost to monitor these parameters. Each control device is required to have specific types of monitoring equipment as itemized in the regulation. Other parameters may be monitored upon approval from the Administrator in accordance with the requirements specified in § 63.143(d) of subpart G.

Continuous monitoring requirements were selected because they are known to result in optimum control device performance. A nonregenerative carbon adsorber requires different frequencies because the carbon bed must be replaced at regular intervals.

For collection systems transporting vapors to any device, there are two alternatives for ensuring that the collected vapors actually reach the control device without being diverted to the atmosphere. One is use of flow indicators in bypass lines that could divert the vent stream. These would produce continuous records. An alternative is the use of sealed or locked valves to prevent diversion. In this case, monthly inspection of the valves is required to ensure the integrity of the seals or locks, instead of continuous monitoring.

3. Review of Technical Considerations Underlying Selection Process for Process Wastewater Provisions

Industry representatives have expressed a number of concerns with EPA's basic approach to estimating and controlling emissions, and estimating control costs. The overall view of industry is that emission estimates are overstated and control costs are understated. Underlying these overall opinions are a number of technical issues on the characterization of the industry, the emission models, and the assumptions in the cost analysis. This section of the notice presents summaries of these technical issues and requests comments and data on these issues. Consequently, there may be changes to the emission estimation and control cost methodologies. The final rule will be based on consideration of the revised estimates.

a. *Physical/chemical properties of HAP's.* One concern, raised by industry representatives, is the range of required removal efficiencies of HAP's within each strippability group in Table 9 of subpart G entitled Organic HAP Strippability Groups and Target Removal Efficiencies. The removal efficiencies for the compounds were predicted based on physical and chemical properties of the chemicals, the design steam stripper conditions, etc. The compounds were grouped with others having similar removal efficiencies and then each group was assigned a target removal efficiency. As a result, three strippability groups were formed. The target removal efficiency for each strippability group is: Strippability Group A, 99 percent; Strippability Group B, 95 percent; and Strippability Group C, 70 percent.

The concern is that the ranges represented in each strippability group could hinder a compliance demonstration for specific HAP's that cannot individually attain removal efficiencies at the level assigned to the strippability group. This could result because each strippability group comprises several HAP's and each HAP in each strippability group does not necessarily have the same removal efficiency that is assigned to the strippability group. For example, the removal efficiency that is achievable for a particular HAP in Strippability Group B might be 92 percent, while the target removal efficiency for Strippability Group B is 95 percent. The EPA is considering whether it is more appropriate to develop more strippability groups with smaller ranges of removal efficiencies in each group, or to assign an individual target removal efficiency for each HAP.

To make the determination of whether to revise the strippability groups, additional information is needed for the current physical/chemical properties data base. Specifically, the information needed includes: (1) Experimental data and documentation for Henry Law's constants at 25 °C and 100 °C· (2)

documentation (e.g., reaction kinetics) for HAP's that cannot readily exist in wastewater (e.g., due to rapid hydrolysis); and (3) documentation of HAP's that are difficult to remove by steam stripping. This information would be compared against the documentation EPA used to derive the fraction emitted values and strippability factors used in the development of the proposed regulation. The EPA requests that commenters provide data on the items listed above.

b. *Scenarios and modeling emissions.* As part of the technical basis for estimating emissions, EPA developed three scenarios representing SOCMI wastewater collection and treatment systems. Equilibrium and mass transfer equations were used to model the emissions from the waste management units (e.g., individual drain systems, wastewater tanks, biological treatment units, etc.) in each of the scenarios. These scenarios and models are discussed in section V.A. of this preamble, in the BID, and in the document "Industrial Wastewater Volatile Organic Compound Emissions—Background Information for BACT/LAER Determinations" (EPA–450/3–90–004).

Industry representatives questioned whether the scenarios are representative of SOCMI wastewater collection and treatment systems. Specifically, industry representatives pointed out that many facilities have installed traps on drains and seals on other waste management units, therefore controlling some air emissions from the systems. In response to these concerns, CMA developed an alternative scenario based on input from CMA member companies and provided it to EPA; however, the documentation for the scenario is not complete enough to provide a complete evaluation of how well it represents systems used at SOCMI facilities.

In order to assess the scenario best representing the industry's wastewater collection and treatment systems, EPA requests information characterizing these systems as they are typically found at SOCMI facilities. If such additional documentation can be provided on the industry as a whole, EPA will consider revising the scenarios used as part of the basis of the proposed rule.

Because EPA may revise the scenarios and because industry representatives have expressed concerns about some of the models used for estimating emissions from waste management units, EPA will be reevaluating some models between proposal and promulgation. Revisions to the models will reflect technical issues. The EPA requests results of studies measuring air emissions from waste management units, especially individual drain systems (e.g., drains, manholes, sumps, and junction boxes) as well as wastewater tanks and biological treatment units.

c. *Point of generation.* The proposed rule requires that the owner or operator of a facility determine which process wastewater streams are Group 1 or Group 2. This determination is based on concentration and flow rate. The concentration and flow rate are determined by: (1) Measurements taken at the point of generation; or (2) calculations based on process knowledge or measurements not taken at the point of generation, and adjusted to estimate concentration and flow rate at the point of generation. Industry has commented that: (1) There are difficulties with characterizing the flow rate and concentration at the point of generation of a wastewater stream; and (2) the concentration and flow rate should be determined at the first air-water interface (e.g., a process sump). Industry representatives have stated that many newer chemical process units use complex piping systems that convey wastewater directly to collection tanks or sumps, making it impractical or potentially impossible to measure flow rate and concentration for each individual stream. Furthermore, industry representatives have stated that: (1) Engineering estimates using process knowledge are possible, but are difficult due to the considerable variations in the process, especially batch operations; and (2) material balance calculations would be most appropriate but may not be accurate enough when the number of streams and process variables become large.

The basic foundation of the proposed provisions for process wastewater is to identify wastewater streams for control and treatment based on action levels at their point of generation, prior to dilution and air emissions losses. This approach, which is also discussed in Section VI.B.4 of this notice, focuses control efforts on the streams with the highest loadings. If dilution prior to determination of the need to control is allowed by changing the location of the point of generation, some streams that could have been treated cost-effectively would not be treated and some dilute streams that were mixed with more concentrated streams would be controlled less cost-effectively. The EPA believes that sufficient flexibility for compliance is in the proposed wastewater provisions without the need to change the point of generation. For example, the owner or operator may elect to use the alternative process unit compliance option. This compliance option allows mixing of process wastewater streams from the same process unit and does not require a concentration and flow rate determination at the point of generation unless the owner or operator wishes to demonstrate that certain streams are Group 2 streams. Comments are requested on the difficulties that could be experienced from the requirement to determine wastewater stream characteristics at the point of generation. Commenters opposed to determining characteristics at the point of generation should suggest alternative approaches to achieve the same result.

d. *Wastewater tanks.* The proposed provisions require wastewater tanks storing Group 1 wastewater to be equipped with a fixed roof and a control device or a floating roof with specific rim seals and deck fittings. Comments have been received stating that for some wastewater streams, a fixed roof alone would achieve effective control and the control device would not be necessary.

The EPA is considering establishing a threshold based on the total partial pressure of the HAP's in process wastewater stored in effected tanks or covered basins. The owner or operator of a wastewater tank storing Group 1 wastewater with a total HAP partial pressure greater than or equal to the threshold would be required to equip the tank with an internal or external floating roof or a closed vent system with a 95 percent efficient control device. The owner or operator of a wastewater tank storing Group 1 wastewater with a total HAP partial pressure less than the threshold would be required to use only a fixed cover. The threshold would not apply to wastewater tanks used as treatment processes. One option being considered for the partial pressure threshold is the pressure for the proposed provisions for storage vessels.

e. *Biological treatment technologies.* While biological treatment units and other technologies may be used to comply with the HON, they must achieve a comparable control efficiency as the reference control technology, which has been proposed to be a design steam stripper. Concerns have been raised that EPA's analysis of the wastewater component of the floor did not reflect industry practice. Industry has stated that biological treatment units should be given more serious consideration as reference control technology. Two concerns have been raised by industry representatives:

1. Do well-operated and maintained biological treatment units in

conjunction with trapped individual drain systems define the wastewater component of the source-wide floor?

2. Is an appropriate reference control technology for biodegradable HAP's a biological treatment unit instead of the design steam stripper?

As previously described, EPA's analysis of the floor level of control was based on existing air emission standards for each kind of emission point. Although EPA was aware that some degree of control of air emissions resulted from compliance with other regulations under CWA, OSHA, and RCRA, EPA did not have the information needed to evaluate the resulting emissions control efficiency that was being achieved. Specifically, information was lacking on the extent to which facilities used vapor suppression systems in the individual drain systems and waste management units. Late in the development of the wastewater provisions, the chemical industry reported that traps and seals are commonly used on components in the individual drain systems (e.g., which include drains, junction boxes, and manholes) and that many treatment components such as ponds and tanks are covered as well.

If current industry practice for biodegradable HAP's is to suppress air emissions down to the biological treatment unit, then the existing analysis of the source-wide floor may include an underestimate of the control efficiency being achieved for wastewater. Consequently, EPA plans to evaluate the performance achieved by individual drain systems and biological treatment systems at existing facilities and then to reassess the source-wide floor. To do this analysis, a number of technical issues need to be resolved. Specific issues that must be resolved include: (1) Appropriate biokinetic data; (2) appropriate models to predict rates of volatilization; and (3) the best 12 percent of design and operating practices representative of the industry. The EPA expects to meet with industry representatives and other interested parties during the period between proposal and promulgation to obtain the necessary data and to resolve these and other technical issues. These issues are discussed briefly elsewhere in this section of the notice.

The degree of control achieved with biological treatment systems depends on the biodegradability of the compounds and the system design. In some cases, high removal efficiencies have been reported, and industry sources have claimed that control performance for all degradable organics is generally quite good with overall removals exceeding 80 to 85 percent of the volatiles. Information on performance and characteristics of biological treatment units (e.g., retention time, aeration rate, aeration gas, mixed liquor suspended solids) will be needed from as many SOCMI sources as possible.

The EPA will evaluate control options based on biological treatment and emission containment in individual drain systems. In order to evaluate biological treatment unit control options, additional information on individual drain systems and other information is required. If the results of EPA's evaluation indicate that biological treatment and emission containment in individual drain systems should be selected as a reference control technology, a supplemental proposal would be published in the **Federal Register**. Comments are requested on this issue and should address the specific concerns and data needs discussed in this section. Specific data EPA will need to evaluate biological treatment as a reference control technology are:

1. HAP-specific efficiency of biological treatment units in terms of mass destruction versus volatilization;
2. Design and operating parameters to attain a high degree of destruction;
3. Data on biodegradation rates for all types of systems;
4. Collection system design, specifically, the number and type of treatment units and their configuration;
5. Control devices used on treatment units (e.g., equalization basins and primary clarifiers) that occur prior to the biological treatment unit, and their efficiency for the control of air emissions; and
6. Identification of HAP's that do not readily biodegrade (e.g., carbon tetrachloride and vinyl chloride).

It should be noted that for non-biodegradable HAP's, the design steam stripper would remain the reference control technology.

The EPA is also evaluating biological treatment unit models and the biorate constant data base not only to reassess floor and reference control technology decisions, but also to ensure the most accurate results possible for compliance demonstration. Industry representatives have stated that kinetic constants obtained from different experiments for an individual chemical should not be used to predict biological treatment unit performance. However, not all the literature and data reporting experimental results are extensive enough to cover the range of constants necessary as inputs for the models that predict biological treatment performance. To reassess the data base used in the models, EPA requests additional data on biokinetic rate constants and will use the most scientifically defensible constants in the data base.

The EPA will also compare the EPA-developed model, WATER7, for predicting biological treatment unit performance to other models such as PAVE, BASTE, and TOXCHEM, to determine if the results are similar. For models having results similar to WATER7 results, EPA may allow their use in compliance demonstration. A summary of the models EPA will evaluate is located in Table 5.1 entitled "Computer-Based Fate and Transport Models" (Docket A-90-23, section II-B).

f. *Test methods.* The proposed wastewater provisions require use of Method 304, Determination of Biodegradation Rates of Organic Compounds, and modeling with WATER7, or another approved model, to predict HAP removal achieved in a biological treatment unit. The EPA is considering allowing WATER7 or other approved models to be used without Method 304. With this approach, site-specific input would not be used to derive the biodegradation rate or to establish parameter ranges. If models are used without Method 304 inputs, the model parameters would be required to match the biological treatment unit's operating parameters, such as effluent concentration. If the two sets of parameters are not consistent, the owner or operator would be required to reestablish parameter ranges and derive the biodegradation rate by running Method 304.

Comments concerning safety issues were also raised by industry representatives. These safety issues have been addressed in proposed Method 304 by allowing alternative types of heaters (immersion heaters were originally specified) and by calling for headspace gas monitoring when formation of explosive gases is a possible concern.

Another concern expressed is what triggers the need to perform Method 304 to demonstrate compliance. While it is clear that an initial demonstration of the biological treatment system's ability to biodegrade HAP's is necessary, it is not explicitly stated in the proposed provisions whether or when subsequent demonstrations are required. Examples of when Method 304 may be required to be run after the initial demonstration are: (1) Addition of a new process unit to the source or after a change in the characteristics of an existing process; (2) scheduled checks at least once every five years; and (3) whenever a performance test is required (e.g., changes in established parameters or operation of the biological treatment unit).

Proposed Method 305, Measurement of Individual Volatile Organics in Wastewater, is the method developed by EPA to provide a relative measure of the volatile organic emission potential of a waste or wastewater stream. Industry representatives report that because facilities already use other methods developed by EPA for Clean Water Act regulations to comply with their effluent discharge permits, facility owners or operators may prefer to use these other methods to demonstrate compliance with the HON. The proposed wastewater provisions allow any EPA-approved method to be used. However, because Method 305 is the basis of the concentration threshold for Group 1 wastewater in the proposed provisions, any other EPA method used for applicability determination and compliance demonstration will have to be validated in accordance with the procedures in sections 5.1 or 5.3 (as applicable) of Method 301 of 40 CFR part 63, appendix A. The results from the alternate method (if valid according to the procedures listed above) are then adjusted according to the fraction measured (F_m) values listed in Table 13 of subpart G.

Industry representatives have suggested that preapproval of Methods 304 and 305 would streamline the validation approval process, benefiting both industry and the regulatory authorities. Method 304 would be preapproved for specific apparatus configurations; Method 305 would be preapproved for specific compounds or ranges compounds for methods other than Method 305. The EPA agrees with this suggestion and requests validation data. This data would be used to establish a data base for public use on the EPA bulletin board system. The data base would list EPA methods approved as alternates for Method 305 and the compounds and concentrations for which the alternative method is valid (as defined by Method 301). Method 305 has a set of established heating and purging requirements, but does allow the owner or operator latitude in choosing sample stream trapping and analytical methodology as long as the recovery criteria listed in the method are met. The EPA requests information on trapping and analytical methodologies for specific compounds for discussion in this data base.

The data base would also list sampling and analytical techniques for compounds which are appropriate for use in the "back half" (i.e., the speciation portion) of Method 305. These techniques would be suggested analytical systems for Method 305; the recovery requirements listed in Method 305 would still be required. The EPA requests that data be submitted to Docket Number A–90–19 (see **ADDRESSES**) and to Director, Technical Support Division, Office of Air Quality Planning and Standards, MD–14, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

F. Selection of Emissions Averaging Provisions

This section of the preamble presents the rationale for the proposed emissions averaging provisions (described in § 63.150 of subpart G) and the alternative policies that were considered in developing these provisions.

As part of the EPA's general policy of encouraging the use of market-based systems where they can be properly monitored and enforced, the Administrator is proposing to allow sources the option of using emissions averaging to comply with subpart G. Emissions averaging provides sources the flexibility to comply in the least costly manner while still maintaining a regulation that is workable and enforceable. The rationale for the specific provisions of the emissions averaging policy is detailed below.

1. The Scope of Emissions Averaging

The Administrator proposes to allow emissions averaging across all the emission points, except equipment leaks, within a single new or existing source, as source is defined for the SOCMI source category. As such, emissions from the following kinds of emission points can be averaged: process vents, wastewater operations, storage vessels, and transfer operations. The Administrator is proposing to allow averaging across these 4 kinds of emission points in order to provide as much flexibility as possible while maintaining an enforceable standard.

Equipment leaks are included in SOCMI sources, but they cannot be included in emissions averages because: (1) The negotiated standard for equipment leaks has no fixed performance level; and (2) no method currently exists for determining the magnitude of allowable emissions to assign for leaks. Without a method to determine the magnitude of allowable emissions to assign for equipment leaks, an averaging policy that included equipment leaks would be difficult to enforce. When methods are developed to assign allowable emission levels for particular leak points, EPA will consider revising the HON to allow the inclusion of equipment leaks in emissions averages.

As previously described, emissions averaging, and in particular the scope of emissions averaging being proposed today, was selected to provide sources broad flexibility in compliance with the HON. Emissions averaging, as proposed, is designed to result in equal or lesser total emissions from any one source, compared to point-by-point compliance with the HON. Though the proposed emissions averaging policy does not specifically address the issue of toxicity, emissions averaging is not designed to result in more toxic emissions than point-by-point compliance. Owners and operators of SOCMI sources have an incentive to avoid increases in emissions of highly toxic chemicals under emissions averaging because such increases could result in additional controls being required after the subsequent evaluation of the residual risk associated with individual sources and the source category as a whole. Because the issue of calculating residual risk, under section 112(f) of the Act, comes up in the context of the HON, the EPA requests comment on whether residual risk should be calculated on a plant-wide basis, on a source category basis, or on the basis of some other reasonable alternative.

The issue of how averaging will influence the potential toxicity of emissions from HON sources, and what EPA is considering in response to this issue, is further discussed in section VII.F.8 of this notice.

In the future, EPA may regulate other industrial processes at SOCMI facilities (e.g., polymers and resins manufacturing). The emission points in these other industrial processes will not be part of the SOCMI source as defined in the proposed rule. These points cannot be included in emissions averages with the points comprising the sources in the SOCMI source category because the EPA interpretation of the floor requirement in the Act prevents averaging across sources. However, the EPA is seeking comment on a complementary legal interpretation of sections 112(d) and 112(i) of the Act. This legal interpretation is described in the following section.

2. Complementary Legal Interpretation for Broader Emissions Averaging

The EPA's proposed rule allows an averaging approach for HON-covered portions of a plant. The EPA is also soliciting comment on a broader averaging alternative, as set forth below. Significantly, this latter averaging scheme is not being proposed as an alternative to the averaging approach, described above. Rather, the two approaches are entirely complementary. However, because the legal issues posed by the broader averaging scheme differ appreciably from those implicated by the more narrow averaging proposal, the EPA believes that a separate discussion of the former is warranted.

The broad averaging alternative relies upon a legal theory which would permit compliance with the HON MACT standard (or, for that matter, with any other MACT standard to be developed by EPA) by averaging emissions from points located anywhere within an entire contiguous facility, which contains HON-covered processing units.

This alternative would differentiate between the term "source in a category or subcategory," used in section 112(d), and the term "source," used in section 112(i). To begin with, it is a maxim of statutory construction that the use of different words by Congress in two different subsections is not accidental and reflects well thought-out Congressional intent. See, Sutherland Stat. Const. Sec. 46.06 (4th Ed.). Specifically, for purposes of establishing emissions standards under subsection 112(d), Congress expected EPA to identify specific production lines, pieces of equipment, *etc.*, located within major stationary sources or area sources, and to treat them as sources only for the purposes of subsections 112(d)(3)(A) and (B), *i.e.*, for the purposes of determining what is the average emission limitation achieved by the best performing twelve percent of existing sources or average emission limitation achieved by the five best performing sources. Since the term source was used in subsection 112(d) for a distinct and unique purpose, the relevant statutory language contains a qualifying set of words—"in a category or subcategory"—appended to the word "source."

Significantly, in subsection 112(i), the relevant statutory language contains the term "source"—a fact that would allow EPA to conclude, for purposes of subsection 112(i), that a source which must achieve compliance is a "major source" which encompasses an entire plant. See, e.g., *Chevron, U.S.A. Inc., versus NRDC*, 467 U.S. 837(1984). This reading is supported by the fact that the definitions of statutory terms, set forth in subsection 112(a), contain the traditional definitions of such terms as "major source," and "stationary source." Under this construction, the statutory language "any emissions standard, limitation, or regulation promulgated under this section [112] and applicable to a source" describes all of the existing MACT standards, established under subsection 112(d), and applicable to a source, which contains within it "sources in a category or subcategory" (*i.e.*, production lines, pieces of equipment, *etc.*) covered by such MACT standards.

The EPA also notes that, in its "early reductions" rule, it adopted a plant-wide definition of source. See 56 FR 27342 (June 13, 1991)—an early indication that the Agency believed that an entire contiguous facility could be considered to be a source for purposes of qualifying for a 6 year extension of the MACT compliance deadlines. The EPA is mindful of the fact that it has traditionally enjoyed wide latitude in coming up with diverse definitions of the term "source," depending on what regulatory objectives were implicated, and EPA's considerable discretion in this area has been affirmed by the courts. *Chevron U.S.A. Inc., versus NRDC*, 467 U.S. 837 (1984). The EPA solicits comment on the legal authority to adopt this approach, and also requests comment on implementation considerations.

Under the broader averaging approach, EPA would make no changes in the way it has identified categories and subcategories of sources in the HON and devised appropriate emission standards for them, nor in the way it would prescribe future emission standards for other emission categories or subcategories. For compliance purposes, however, if an owner or operator does not wish to control a particular HON-covered emission point to the level that would result in compliance with the relevant HON emission standard, the extra emissions from that point could be offset by emissions reductions greater than what is required by any standard then in effect under Section 112 at one or more other emission points within the entire stationary source. In addition, emissions averaging would be allowed across all the emission points within the entire plant, including the SOCMI source category as well as points not yet covered by any MACT standard.

As such, emissions from process vents, wastewater operations, storage vessels and transfer operations could be averaged among themselves or with other emission points within the entire stationary source, in order to provide as much flexibility as possible. However, a distinction would be made between emission points physically similar to emission points covered under the HON or any other MACT and all other emission points. For the former, to participate in the averaging scheme, they must comply with whatever compliance routines have been established under the SOCMI HON or other relevant MACT. For the latter, to participate in averaging, the source must petition EPA to establish an appropriate compliance routine. To be sure, once EPA establishes such a compliance routine for any new type of emission point, all similar emission points located within any sources can participate in the averaging, so long as they use the EPA-approved compliance routine. The EPA solicits comment also on how it would verify the baseline for unregulated emission points, and how it would structure the averaging compliance process to assure the standard as a whole remains enforceable. One possibility to consider would be to use the average emissions from such emission points over some representative time period as their baselines.

While equipment leaks are included in SOCMI sources, they cannot at this time be included in emissions averages. Equipment leaks are not included because: (1) The negotiated standard does not require any fixed performance level; and (2) no practical method currently exists to verify performance. Under this alternative, EPA would expeditiously develop methods to assign allowable emission levels to particular leak points or groups of leak points, and would similarly develop methods for calculating emissions from emission points not regulated by the HON. The Administrator seeks comment on means to verify and document the emission performance levels achieved for situations where equipment leaks are included in an average. Commenters should include a description of the compliance verification procedure that would be used and what data needs to be supplied to support the suggested system. Comments are also requested on types of non-SOCMI emission points that might be included in broader averages.

Under the broader approach, emission reductions from emission points not covered by the HON would be usable to generate credits, subject to the previously discussed limitations and any limitations added in any other MACT standard applicable to the relevant emission points. Credits could be generated at any time from non-HON emission points until they become subject to a MACT standard. When they become subject to a MACT standard, the future value of reductions at those emission points would be governed by the emission standards required by the new MACT. Stated differently, the offsets available from such points would have to be recomputed using the new baseline established for them. Each future MACT standard must contain a floor calculation. To the extent that points covered by these later standards have already been controlled for purposes of participating in an averaging scheme, that relates to the compliance with an earlier standard, the floor for the later standard may be more stringent. As future MACT standards are adopted, EPA would attempt to maximize averaging opportunities and therefore minimize compliance delays and costs.

The EPA believes that the broad averaging scheme, described above, provides significant policy benefits. To begin with, it would enable sources to achieve the same environmental gains, as under the more narrow averaging proposal, but at significantly reduced costs. Second, establishing MACT standards with a facility-wide averaging program could result in the MACT "floor" for future standards being tighter than would have been the case if the emission points outside of the already covered MACT categories would have stayed uncontrolled. Last, but not least, EPA believes that the utilization of the broad averaging scheme may result in the discovery of emission points within facilities that otherwise might have been overlooked by EPA and State regulators.

A factor that must be considered in implementing this approach is that it would require a determination of the permissibility of allowing averages to emit a different combination of pollutants than sources that meet MACT without averaging. This concern is already being evaluated for VOC HAP's in the SOCMI source category. The alternative approach might further complicate this issue by adding dissimilar categories (e.g., industrial cooling towers) emitting dissimilar pollutants (e.g., chromium). Since the HON currently addresses only organic HAP's, significant changes would be necessary to accommodate non-VOC HAP controls. To be sure, this concern could be resolved by limiting trading under the broad averaging proposal to only organic HAP's already covered by a MACT standard, but emitted anywhere within the fenceline. As nonorganic HAP's become covered by subsequent MACT standards the EPA will develop averaging regimes covering such pollutants.

To facilitate comment on this alternative, the EPA is setting forth below the regulatory changes that would be necessary to implement it.

1. Section 63.100. Applicability and designation of source. Amend to add paragraph (h), as follows:

"(h) subparts F, G, and H allow emissions averaging within the entire stationary source subject to the requirements of this Part, including additional information submittals and detailed credit/debit calculations."

2. Section 63.101. Definitions. Amend as follows:

"Emission point means an individual process vent, storage vessel, transfer rack, wastewater stream, or equipment leak, and for purposes of emissions averaging, any individual item of equipment within the stationary source.

* * * * *

"Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the ACT. Building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987 (National Technical Information Service stock number PB 87-100012)."

3. Section 63.112. Emission limits. Amend paragraph (c), as follows:

"(c) Compliance with the emission standard in paragraph (a) or (b) shall be demonstrated in one of the following two ways:

"(2) The owner or operator may elect to control different groups of emission points with the stationary source to different levels than specified under §§ 63.113 through 63.147 as long as the overall emissions reductions from the stationary source equal or exceed the emission reduction required by § 63.112.

"(i) Owners or operators using this emissions averaging compliance approach must calculate their emission debits and credits for those emission points involved in the emission average as specified in § 63.150, develop an Implementation Plan as required in § 63.151, and comply with the general reporting requirements in § 63.152.

"(ii) Emission debits and credits must be calculated separately for new and existing sources. New sources may be included in the same emission average as existing sources. The determination of whether an emission point is part of a new or existing source shall be made according to the provisions of subparts A and F of this part."

4. Section 63.150. Emissions Averaging Provisions.

a. Amend paragraph (c), as follows:

"(c) The following emission points can be credited in an emissions average to offset use of controls less stringent than the reference technology on Group 1 emission points:

* * * * *

"(8) Any other emissions points within the stationary source except those excluded from use as credits in an emissions average by a standard promulgated under section 112."

b. Amend paragraph (d), as follows:

"(d) The following emission points cannot be used to generate credits in emission averaging:

"(1) Emission points subject to §§ 63.113 through 63.149 already controlled on or before (date of promulgation), except those that were controlled as part of the section 112(i)(5) early reduction program, the 33/50 program, or a pollution prevention program as described in paragraph (c) of this section.

* * *"

c. Amend paragraph (e) as follows:

"(e) For all points included in an emission average, the owner or operator shall:

* * * * *

"(2) Calculate credits for all emission points that are overcontrolled to compensate for the debits using equations in paragraph (g). Emission points that meet the criteria of paragraph (c) may be included in the credit calculation, whereas those described in paragraph (d) shall not be included.

5. Section 63.151. Initial Notification and Implementation Plan.

* * * * *

"(d) For emission points included in an emission average, the following information shall be provided in the Implementation Plan.

* * * * *

"(8.5) For each emission point included in the average of other than a process vent, storage vessel, transfer rack or wastewater stream, the owner or operator shall document the following information:

"(i) The information regarding emissions averaging required by any other standard proposed under section 112; or

"(ii) Information reasonably similar to information regarding emissions averaging required by any standard proposed under section 112. The Administrator may request any reasonably related supplemental information within 30 days after submission."

The EPA further solicits comment on the legal and policy implications of allowing averaging between new and existing sources within a plant in reliance upon the legal interpretation outlined above. An alternative approach would be for the EPA to rely upon an interpretation of section 112(d) under which new and existing sources would be considered as comprising separate subcategories within a category. The EPA solicits comment on this interpretation in light of the approach to identifying subcategories that the EPA followed publishing the list of categories and subcategories required under section 112(c) of the Act (57 FR 31576, July 16, 1992).

3. Credits

Under the proposed emissions averaging system, a source can get credits for emission reductions achieved after passage of the 1990 amendments to the Act if they result in greater emission reductions than required by the proposed rule for the relevant points.

There are three ways a source might generate credits: (1) Using control equipment that EPA agrees has a higher efficiency than the reference control technology on a Group 1 point; (2) controlling a Group 2 point; and (3) using a pollution prevention measure on a Group 2 point or using a pollution prevention measure that results in lower emissions than use of the reference control technology alone on a Group 1 point.

In addition to the three ways of generating credits, the EPA is considering the feasibility and desirability of allowing credits for recycling activities which can be clearly shown to have resulted in quantifiable emission reductions. The EPA envisions that sources would be required to account for all emissions to the atmosphere during the entire recycling process and those emissions would reduce the amount of credits attributable to the recycling activity. At this point, the EPA has not determined which specific recycling activities can be shown to meet these requirements. The Agency intends to investigate this potential further and is therefore soliciting comments on what activities would qualify for this treatment and on procedures for quantifying credits and procedures for ensuring that all atmospheric emissions are accounted for. The EPA is interested in providing credits for recycling if the emission reduction can be quantified and made enforceable. The EPA is willing to include provisions in the final rule for crediting recycling if sufficient information on quantification, methodology, and enforceable mechanisms for such recycling measures is received during the public comment period.

a. *Reference efficiency ratings.* Sources cannot use a type of control equipment or pollution prevention measure to generate credits unless the source can demonstrate the efficiency or level of emission reduction achievable through the measure from its use over time. For innovative control technologies that are different either in use or design from the reference controls, the effectiveness of the technologies must be demonstrated to the EPA or the operating permit authority prior to their use for compliance with the proposed rule.

If the technology in question would be used for credit in no more than three applications in a given facility, the operating permitting authority can assign it a control efficiency as part of the permit review. However, if the permitting authority concludes that the technology has broad applicability or the source wishes to use it in more than three applications, the EPA will assign its control efficiency and publish a description of the technology in the **Federal Register** so that it is available for widespread use in averaging.

This process is being proposed to encourage innovation in control technologies by establishing a relatively low approval hurdle for technologies with limited applicability and potential for return to the developer while maintaining a thorough federal review for technologies with the potential for broad applicability, widespread use and high returns. In addition, this process ensures that information about significant advancements in technology will reach a wide and varied audience, thus encouraging further innovation. The reference efficiency assigned by EPA to a new type of control equipment would be based on the level of emission reductions that could be expected from that equipment if it were in use in a variety of situations. The EPA has established this process because subpart G of the HON is a national standard and the reference efficiencies for new controls must be established at a level that can be met nationwide.

In general, sources cannot get emissions averaging credit for the use of control equipment above its designated reference efficiency rating. For example, if the EPA considers a certain control to have a 98 percent control efficiency, the source cannot get credit for operating it above that efficiency. There is an exception to this policy for storage vessels controlled with closed vent systems with a 98-percent efficient control device and for process vents on which the source has demonstrated to the EPA that control can achieve 99.9 percent control. In addition, for these sources to get credit for the 99.9 percent control, the source must submit and the EPA must approve a continuous emissions monitoring plan for the relevant process vent and its control.

The general policy of reference control efficiency ratings has been established because the reference efficiency levels are set at the minimum level of emissions reduction that is generally achieved by the control device. Many sources may, by simply applying the device, achieve greater emissions reduction than predicted by the technology's reference efficiency rating. To provide credits in this situation without requiring certain demonstrations of a higher efficiency would give the source a windfall and result in a net increase in emissions over the level that would be expected if there were no emissions averaging.

This policy is fair to the sources, since the emission credits and the emission debits would usually be based on the same reference efficiency ratings. Emission debits, the amount of emissions that the source must make up for not controlling a Group 1 point, are based on the efficiency of the point's reference control technology. A source is not required to test the emission point to determine the level of control that would be achieved in practice if the reference control technology were to be applied at that point. If such testing were required, then the amount of emission debits for a particular point would, in many cases, be greater.

In addition, to grant credits for the small amount of emission difference that might occur above a reference efficiency would lead to significant enforcement problems. It would be very difficult to ensure that, on a continuous basis, a technology achieves an emissions reduction above its reference efficiency rating. It would be even more difficult, if not impossible, for sources to prove to inspectors that they are in fact achieving these higher levels of efficiency. Use of a reference control efficiency for each control technology allows inspectors to ensure compliance merely by checking that the equipment is in place and operating properly.

Use of reference efficiency ratings helps ensure that the emissions averaging system will result in the same or better emission reductions as a rule that does not allow emissions averaging. In addition, the use of reference efficiency ratings simplifies the emissions averaging system, thus making it enforceable.

The system to provide higher nominal efficiency ratings for the storage vessels controlled with closed vent systems with a control device and for process vent reference control technologies in certain circumstances is being proposed to encourage the use of emissions averaging, the improved operation and maintenance of the reference controls, and expanded use of continuous emissions monitoring. The proposed rule is essentially a performance standard and does not require the installation of any particular controls. In fact, sources are encouraged to meet the performance level of the standard using the least costly method available, including emissions averaging. However, the level of the standard is based on the minimum level of control anticipated with application and proper operation and maintenance of the reference control technologies. The reference efficiency assigned to each of the reference controls also contributes to the determination of the level of the standard.

Some sources may be able to achieve higher levels of emissions reduction than the reference control efficiencies while using the reference control technologies because of the particular characteristics of their emission streams. Some would argue that this higher level of control, over the efficiency assigned to a reference control technology, should be allowed to be used for emissions averaging credits. The EPA agrees that significantly higher emission control levels should be credited, but believes that marginally higher levels should not. As a result, the EPA is proposing to allow higher nominal efficiency ratings only for those applications of process vent reference controls that can be demonstrated to achieve 99.9 percent control and controlled closed vent systems on storage vessels that achieve 98 percent control. In addition, the source would be required to institute an EPA-approved plan for continuous emissions monitoring at the point assigned the higher nominal efficiency for the reference control.

The proposed rule does not allow a source to get a higher nominal efficiency rating for the reference controls for transfer operations, wastewater operations, or storage vessels (except controlled closed vent systems) because the technologies are not as well characterized. The EPA is seeking comment on how a source might use a reference control for a transfer operation, wastewater operation, or storage vessel to create control more stringent than the reference efficiency rating, and how monitoring might be used to ensure that the extra control was achieved on a continuous basis. In addition, the EPA is seeking comment on the inclusion of this system for assigning process vent reference controls a higher nominal efficiency rating.

b. *Pollution prevention credits.* Credits can also be generated through use of a pollution prevention measure. For the purposes of the proposed rule, the EPA is referring to any pollution prevention activities described in the Agency's Pollution Prevention Strategy (56 FR 7849) that are applicable to this industry. The following activities are included in the description of pollution prevention: substitution of non-toxic for toxic feedstocks in making a product; alterations to the production process to reduce the volume of materials released to the environment; equipment modifications; housekeeping measures; and in-process, recycling that returns waste materials directly to production as raw materials. Other pollution prevention approaches that are identified in the EPA's Pollution Prevention Strategy and are applicable to this industry would also be acceptable for credit. The EPA solicits comment on the specific pollution prevention approaches identified in the strategy that might be applicable to this industry.

The EPA proposes that shutdowns (i.e., permanent closures, not maintenance turnarounds) cannot be used to generate credits, even if they are part of an Early Reduction commitment under section 112(i)(5) of the Act, unless they are part of a change that qualifies as a pollution prevention measure as defined in the EPA's Pollution Prevention Strategy (56 FR 7849). One example would be if a source converts a chemical manufacturing process in an emissions averaging program from a HAP-using process to a non-HAP-using process. The EPA solicits comment on whether pollution prevention credit should be granted for cases in which a source reduces its emissions by switching from production of one chemical to another as well as the cases in which a source reduces its emissions through pollution prevention measures but continues to produce the same chemical.

Pollution prevention measures will be allowed to generate credits equal to the difference between the emissions allowed by the rule for the previous process after control and the emissions from the modified production process. This credit would be allowed each month the modified production process is in place. The amount of credit would be adjusted according to the actual production volume of the relevant production process for that month.

If a pollution prevention measure is used as a means of compliance with the rule for Group 1 points, then the activity would not generate credits unless the control efficiency of the pollution prevention measure is greater than the efficiency of the reference control technology. For example, if a process change results in a reduction in the mass rate of HAP emissions from a Group 1 process vent, such a change would only generate credits if the emission reduction were greater than 98 percent. However, if the process change resulted in a 98 percent reduction, equal to the reference control technology, the pollution prevention measure could be used to meet the standard but would not generate a credit or debit. See section VII.F.4, "Credits for Previous Actions" of this notice for an example regarding credits for pollution prevention.

The EPA believes that the above method of valuing credits will offer industry flexibility to cost effectively comply with the HON through emissions averaging and achieve a level of emission reduction that is the same or better than a rule that does not allow emissions averaging.

4. Credits for Previous Actions

To utilize emissions averaging, an owner or operator must first determine the baseline level of control on those emission points that will be included in the average. Control equipment is considered part of the source's baseline level of control if it was in place before the passage of the 1990 amendments to the Act (November 15, 1990). Generally, this equipment can be used to meet the control level at an individual emission point, but not to generate emission credits for averages. However, sources can get emission credits for a control action taken before the 1990 amendments to the Act (November 15, 1990) if the action achieves more emission reduction than the standard requires for the relevant point and: (1) It is a pollution prevention measure, taken after 1987, qualifying under the Agency's Pollution Prevention Strategy (56 FR 7849); (2) it is being used to satisfy a 33/50 commitment as described in EPA Publication Number EPA-741-K-92-001; or (3) it is an Early Reductions commitment, other than an equipment shutdown, approved under the proposed 40 CFR 63.70 through 63.81 (56 FR 27338). Controls applied as part of an Early Reductions commitment can begin to generate credits only after the relevant point becomes subject to the HON, that is after the expiration of the 6-year extension for the Early Reductions source.

The proposed rule does not allow most actions taken before passage of the 1990 amendments to be used to generate emission credits because such reductions would have occurred anyway, for reasons unrelated to the 1990 amendments or the proposed rule. If EPA allowed these actions to generate emission credits, then the source would be able to generate more emission debits and, thus, more total emissions. Emissions averaging is a method for complying with subpart G and should not result in more emissions than the other compliance options.

The proposed rule allows credit for controls put in place since the passage of the 1990 amendments for two reasons. First, since the 1990 amendments require the promulgation of emission standards, many sources have begun putting in place controls in anticipation of upcoming regulations. If these controls could not be credited for averaging, these sources would be at a disadvantage relative to other sources that chose to postpone emission reductions until required by rule. Thus, allowing credit for controls put in place since, and presumably because of, passage of the amendments creates a more equitable emissions averaging system.

The second reason for the policy on crediting existing controls has to do with the precedent set by this proposed rule. This proposed rule describes the first application of emission averaging for compliance with standards developed under section 112(d) of the Act. Many industry groups have interpreted, and will continue to interpret this proposed rule as an indication of the types of requirements that will be incorporated into future standards. By proposing the passage of the 1990 amendments as the date for determining the source's baseline level of control, the Administrator is setting a precedent that will encourage sources in other source categories to initiate emission reductions before their standards are developed. Selection of any date specifically associated with the proposed rule, such as the date of proposal or promulgation, would not be interpreted as a clear indication of the Administrator's intentions for future standards.

The EPA is proposing to make limited exceptions to the general policy of not allowing credit for reductions achieved before passage of the amendments in three cases, the Early Reductions program, the 33/50 program, and pollution prevention. These exceptions are proposed to set a precedent that encourages future participation in these voluntary emissions reductions programs by sources in other source categories and to reward innovative pollution prevention efforts. The EPA believes these actions are beneficial to the environment and wishes to encourage sources to undertake them.

The following two examples illustrate the policy regarding credit for previous actions. In the first case, a Group 2 process vent was controlled with an incinerator before November 15, 1990. The HON would not require that a Group 2 process vent be controlled, thus in this situation, the source is achieving more emission reduction than required on the Group 2 vent. However, the incinerator cannot be used to generate credits because it is not a pollution prevention measure or part of either an Early Reductions or a 33/50 commitment.

In the second example, the source used a pollution prevention measure on a wastewater stream in 1988. This stream contains specific pollutants for which the steamstripping reference technology can achieve 99 percent removal. Further, of the 99 percent stripped from the wastewater into a vapor stream, the vapor stream reference technology can achieve 95 percent control.

Through the pollution prevention process change, the source reduced the annual amount of wastewater it generates from 50 million liters (13,209,000 gal) to 25 million liters (6,604,500 gal). This process change also reduced potential emissions from the wastewater stream by 50 percent, from 70 to 35 Mg/yr (77 to 38.5 tons/yr). In this case, if the source had not undertaken a pollution prevention measure, then the allowed emissions after 99 percent wastewater stream control followed by 95 percent vapor stream control would be 4.2 Mg/yr (4.6 tons/yr). After taking the pollution prevention measure, emissions were 35 Mg/yr (38.5 tons/yr), which is greater than the 4.2 Mg/yr (4.6 tons/yr) allowed to the point by the rule. Without further controls, the source would not get credit for the pollution prevention measure because it did not reduce emissions below what would have occurred with application of the reference control. However, if the source uses 99 percent wastewater stream control followed by 95 percent vapor stream control in addition to the pollution prevention measure, the residual emissions would be 2.1 Mg/yr (2.3 tons/yr). With the pollution prevention measure and the stream control, the source would receive an annual credit equal to the difference between what the rule would allow if a pollution prevention action had not been undertaken, 4.2 Mg/yr (4.6 tons/yr), and what was actually emitted after pollution prevention and control, 2.1 Mg/yr (2.3 tons/yr). Thus, the credit would be for 2.1 Mg/yr (2.3 tons/yr).

5. Credit Discount Factors

Some have argued that if industry receives a cost savings as a result of emissions averaging, the environment should also share that benefit by experiencing greater emissions reductions. Credit discounting is one way to provide such a benefit to the environment. The EPA is seeking comment on whether it is appropriate to require the use of a credit discount factor in calculating emissions averages. A discount factor would reduce the value of credits in the emissions average by a certain percentage before the credits are compared to the debits.

In considering a discount factor, the EPA examined the requirements for determining MACT in section 112(d) of the Act. Section 112(d)(2) specifies that MACT standards shall require the maximum degree of reduction in emissions of HAP's, taking into consideration, among other things, the cost of achieving those reductions. By defining the source broadly and including the option for emissions averaging in the proposed rule, it could be argued that the EPA is providing flexibility for source owners and operators that would lower the costs of compliance. Some have suggested that, to carry out the mandate of section 112(d)(2), such cost savings should be shared with the environment by requiring sources using averaging to achieve more emission reductions than they would otherwise.

Another view is that discount factors place a tax on market-based incentives that is not placed on traditional command and control compliance methods. This tax discourages emissions averaging thereby increasing the costs of complying with the rule yet not necessarily increasing emission reductions. The increased cost imposed by the inclusion of any discount factor may reduce or completely eliminate the incentive to average thereby increasing the overall cost to society of complying with the rule compared to what it would have been with emissions averaging without decreasing emissions, generating no additional health protection for the public.

There may also be a technical reason for using a discount factor in averaging. Emission estimates that would be used for averaging are inherently uncertain. It should be noted that discounting is not required in most standards that do not allow compliance through some form of trading. Some of the same technical uncertainties also exist for those standards. However, for these standards, the significance of technical uncertainties can be considered more limited because, without emissions averaging, emissions estimates are not the basis for trading. With the technical uncertainties of emissions estimation in mind, the EPA is seeking comment on whether the emissions estimation procedures included in the proposed rule for any kind of emission point can be expected to consistently produce biased results, either over or under estimates of emissions.

Given the above considerations, the EPA is proposing a discount factor to be selected from a range of values from 0 to 20 percent. This range reflects a reasonable span of values that have been included in previous rules involving emissions trading. It is emphasized that a decision on whether to include a discount factor, and if so what the specific value will be, will be settled for promulgation in the final rule. Comments are requested on what that value should be.

One option under consideration is for the value of the discounting factor to vary with the number and kinds of emission points included in the average. The degree of uncertainty associated with estimating emissions varies among different kinds of emission points. For example, there is more certainty regarding the accuracy of the method used for estimating emissions from vents than there is for the method used to estimate emissions from storage vessels. Therefore, the value of the discounting factor could be higher if certain kinds of points, such as storage vessels, were included in the average.

A second option would be to increase the value of the discount factor with increases in the number of points included in the average. The intent of such a provision would be to account for the increased uncertainty associated with including more points, and the corresponding emissions estimates, into the average.

A third option would be to have a different discount factor for different points based on the height at which their emissions are released. This system would attempt to account for the dispersion characteristics and actual exposure impacts of different emission points. However, EPA is concerned that the adoption of a variable discounting factor, as in any of these three options, would greatly increase the administrative complexity of emissions averaging, reducing its workability.

Another option being considered is to include a two-tiered discounting factor so that pollution prevention measures would be assigned a lower factor than other credit-generating activities. This would serve as an incentive to generate credits through activities that prevent pollution. Congress has indicated that, where possible, EPA should encourage emissions reduction through pollution prevention, which often results in reduced emissions from all emission points in the source, both fugitive and point.

The EPA specifically requests comments on the use of a discounting factor for emissions averaging in the HON. Commenters should address what value in the proposed span (0 to 20 percent) should be selected, whether the value should vary (and to what degree) according to the kinds and number of emission points included in the average, and whether a lower value should be assigned to pollution prevention measures.

6. Compliance Period

The proposed rule requires that the credits and debits generated in emissions averages balance on an annual basis. In addition, the proposed rule requires that debits do not exceed credits by more than 25–35 percent in any one quarter of the year. These two requirements are used together to establish an emissions averaging system that provides flexibility for changes in production over time without allowing for wide-ranging fluctuations in HAP emissions over time. The proposed rule also provides sources the opportunity to "bank" extra credits generated in one compliance period for use in a later compliance period.

a. *Annual and quarterly compliance requirements.* The EPA is proposing an annual compliance period for emission points included in averages by requiring that credits and debits balance on an annual basis. This compliance period was selected to provide sources considerable latitude in selecting points for inclusion in emissions averages. With an annual compliance period, sources can average emission points that may not have the same emission rates during some periods of the year, as long as they are similar on an annual basis. This latitude will also be useful to accommodate averages with points that must undergo temporary maintenance shut-downs at different times over the year.

Several other factors were evaluated in making the decision to propose an annual compliance period for emission points in averages. To determine the appropriate compliance period for averaging, EPA examined the ability of control and monitoring equipment to measure emissions or other parameters from the kinds of emission points subject to the HON. Because of short term fluctuations in emissions from some of the points, such as transfer racks, EPA concluded that 30 days was the shortest compliance period that could reasonably be applied to all the kinds of points that can be included in averages. Though the administrator did not choose to require a 30-day compliance period, the proposed rule does require that sources maintain records of their emissions averaging credits and debits on a monthly basis.

In selecting a compliance period for averaging, EPA also considered the need to verify compliance and, when appropriate, take enforcement action in a timely fashion. One concern about an annual compliance period is that the EPA's authority to take administrative enforcement actions would be significantly reduced because section 113(d) of the Act limits assessment of administrative penalties to violations which occur no more than 12 months prior to the initiation of the administrative proceeding. Administrative proceedings are far less costly than judicial proceedings for both EPA and the regulated community. The requirement that debits not exceed credits by more than 25–35 percent in any quarter enables EPA to use this administrative enforcement authority by providing a shorter period in which to verify compliance.

A fourth factor considered in the selection of a compliance period for averaging was the effect of averaging on the distribution of a source's emissions over time. Averaging is intended to allow sources flexibility in how they create emissions reduction without resulting in a significantly different emissions scenario than would have occurred under point-by-point compliance with the proposed rule. The requirement that debits not exceed credits by more than 25–35 percent in any quarter limits the potential for wide variations in emissions over time, thus ensuring that an annual compliance period will not result in a significantly different emissions scenario than a shorter compliance period.

As described above, the requirement that debits do not exceed credits by more than 25–35 percent in any quarter is an important element in the rationale for the annual compliance period. The range for the variability factor included in this requirement, 25–35 percent, was selected based on EPA's assessment of likely differences in emissions across quarters for emission points with similar annual emission values. The EPA is seeking comment on what other factors should be considered in setting this number and data regarding the variability in emissions from individual points over a year. This comment, and the included data, will be used to select a single value for the quarterly variability factor in the final rulemaking.

While the proposed rule establishes a ratio of quarterly credits to debits to provide both flexibility and an enforceable short-term check on emissions, the same goals could be accomplished with a different requirement. Industry sources have suggested that EPA structure the quarterly check on emissions as an absolute emissions limit. The limit would be set by the sum of the residual emissions that would be emitted from the points in the average after application of the reference control to each Group 1 point and with existing controls being applied at each Group 2 point. The owner or operator of the source would set this limit in the operating permit or Implementation Plan based on anticipated operations for upcoming quarters. The EPA is seeking comment on this alternative to the proposed requirement that debits do not exceed credits by more than 25–35 percent in any quarter. Commenters are encouraged to describe why the industry suggestion may be preferable to the proposed requirement and to provide any data that EPA might find useful in comparing the two approaches.

b. *Banking provisions.* One way a source can meet the annual compliance requirements for the proposed rule involves the use of "banked" emission credits. The proposed rule allows sources to bank their extra credits if they generate more credits than are necessary to offset the debits from a given compliance period. These banked credits are then available for use in future compliance periods when the source has generated more debits than credits. Section 63.150(e) of subpart G details how banked credits can be generated and used.

Banking is allowed by the proposed rule to provide flexibility when the number of credits or debits generated over the year differ from what the source anticipated in its averaging plan. Specifically, the banking provisions were developed to provide flexibility when:

(1) There is an unanticipated mismatch in production or utilization rates for the credit and debit generators;

(2) The maintenance shutdowns for averaged points are in different compliance periods; and

(3) One or more of the credit generators must be shut down unexpectedly.

Allowing sources to bank extra credits also encourages earlier emission reductions. Knowing that extra emission credits can be banked for possible use in the future, sources may choose to reduce emissions more than required to generate extra credits at an earlier time.

The final reason for allowing banking in the proposed rule is that banking can be expected to reduce compliance costs in certain circumstances. Without banked credits, sources can be expected to establish averages that should generate more credits than needed to offset debits. Sources would build this cushion of credits into their averaging plans to avoid noncompliance if an unexpected change in their operations results in fewer credits or more debits than anticipated. While this cushion of credits has the benefit of creating increased emissions reductions, it can have a cost to the source if extra control is necessary to create the cushion. Having banked credits reduces the need to build a cushion of credits into the average, thus reducing the costs of compliance in those circumstances where extra control would have been needed to create a cushion of credits. Banking can also be expected to reduce compliance costs in those situations where creating fewer debits or more current credits would be especially expensive. The EPA considers policies to reduce the cost of compliance in an effort to fulfill the Act's statutory requirement to consider cost in setting MACT standards. The inclusion of a banking provision is another mechanism by which the EPA is implementing the requirements of section 112(d)(2).

With the above listed reasons for allowing banking in mind, EPA is seeking comment on whether or not banking provisions should be included in the HON. Some have argued that, despite the benefits banking might provide, it is inherently inconsistent with a NESHAP. As technology based standards, NESHAP does not establish an absolute cap on emissions, but instead allow emissions to grow and change with changes in processes or production. Including banking as a means of compliance with a NESHAP is, in effect, an extension of the compliance period for the source with banked credits. Thus, the primary effect of allowing banking in the proposed rule is to shift emissions over time. However, others would argue that the effect of banking is to achieve emissions reductions earlier than they would otherwise have been achieved and at less cost to society. Thus, to include banking allows a more efficient way to achieve emissions reductions. Based upon this line of argument, the Administrator has concluded that banking is appropriate for the HON in the context of emissions averaging. However, he welcomes comment on if and how banking should be included in the HON.

The only way banked credits can be used is to meet the requirement that credits and debits balance on an annual basis. Banked credits cannot be used to offset debits that would exceed credits by more than 25–35 percent in any one quarter of the year. This policy has been established because, in the Administrator's judgment, the quarterly variability factor provides sufficient operational flexibility on a quarterly basis. In addition, the purpose of the quarterly requirement is to ensure that the levels of over-control and under-control used to comply with emissions averages are roughly equivalent over each quarter of the year. As a result, the quarterly requirement must be based on actual credits and debits from the same time period to be meaningful.

The proposed rule includes a range, from 2 to 5 years, for the length of time that banked credits are available for use. This range is being proposed as a means of soliciting comment on the length of time that banked credits should be available for use. The shorter end of the range is being proposed because EPA has some concerns about the difficulty of taking enforcement actions involving banked credits. Enforcement actions involving banked credits would be based on data from multiple years and multiple emission points. Thus, emissions averaging, especially with the possibility of banking, increases the complexity of the evidence in controversy compared to an enforcement action for point-by-point compliance. In addition, because enforcement actions involving banked credits may cover several years' worth of data, the action may be barred by the general 5-year statute of limitations. If banking is permitted for 5 years, the EPA might be in the position of asserting that there are discrepancies in data, false reporting or other violations up to 10 years after the banked credit was originally generated.

The longer end of the range being proposed for the availability of banked credits is included because sources might create more extra emissions reductions earlier if banked credits are available for use over a longer period. In addition, limiting the length of time that banked credits are available for use can be expected to create an incentive for sources to use the banked credits earlier than they otherwise might have. Thus, it could be argued that a longer time for the use of banked credits could result in later emissions and a longer period of lowered emissions.

The EPA is seeking comment on both the enforcement concerns and incentive value associated with how long banked credits are available for use.

In order to preserve the ability of the government to seek penalties for the full 5-year period authorized by the general statute of limitations, 28 U.S.C. Section 2462, the EPA is proposing to require that the underlying documentation which supports the existence of a banked credit be maintained by the source for 5 years after the credit is used. For example, if the credit is generated in Year One and used by the source in Year Two, then the records showing the validity of that credit would have to be kept until the end of Year Seven. This would enable the

Agency to seek those records in an enforcement action commenced in Year Seven, the last year in which it could seek penalties for a violation of the HON in Year Two. It should be noted that if an enforcement action were actually begun in, for example, Year Three, the source would need to keep the records until such time as the enforcement action was concluded. In other words, the 5-year rule proposed here is what authorizes the source to destroy the records in the absence of an enforcement action. The EPA is interested in comments on whether there is a basis for requiring records retention for a period of less than 5 years.

7. Emissions Averaging Enforcement

The Implementation Plan or operating permit for each source must reflect which points will be included in an emissions average, and how each of those points will be controlled. The controls will be cited in these documents so that inspectors have a relatively simple way to verify compliance by emissions averaging. To verify compliance, inspectors will ensure that the proper controls are installed in the proper places and will examine the source's records to ensure that each emissions average will balance. Thus, the application and proper operation and maintenance of controls is separately enforceable from the credit/debit balance for emission points included in averages.

The EPA has specified the monitoring and recordkeeping requirements necessary to ensure that the credits and debits actually balance in each emissions average and that these balances are enforceable. These balances are considered one enforceable commitment made in either the Implementation Plan or the operating permit.

The EPA is requesting comment on the process for ensuring that emissions averages meet the requirements of this rule in those cases where a source must comply prior to the approval of their Title V operating permit. The proposed rule attempts to ensure this compliance by requiring that sources obtain approval of those Implementation Plans that include emissions averaging. Thus, approval of Implementation Plans for emissions averaging is required even if no operating permit application has been filed.

8. The Potential Influence of Averaging on the Toxicity of Emissions

The current proposal for emission averaging compares "debits" with "credits" without consideration of toxicity. Concerns have been raised that such a scheme would allow emissions of a "more hazardous" pollutant to be increased (debit) for corresponding decreases in a "less hazardous" pollutant (credit). Although the influence of such increases and decreases on the risk to public health posed by the HON sources is unclear, the EPA is currently investigating two approaches which use toxicity data in emission averaging, and requests comments on both.

The first approach is to allow increased emissions of a HAP (debit) to be compensated for by decreases in an equal or greater amount of "a more hazardous pollutant" (credit). Under this approach, EPA's task is to determine the relative hazard of one pollutant to another. For any one pollutant whose emissions are increasing, pollutants which are determined to be equally or more hazardous may be used in the current emission averaging methodology described in the HON. Pollutants which would be considered to be less hazardous would simply not be allowed to be used in the current emission averaging formula. This approach would be the easiest to implement.

An alternative approach provides for more flexibility or greater emission averaging opportunities but increases the complexity involved in integrating hazard into the current emissions averaging methodology. Under this approach, a more hazardous quantity (credit) may be used for emission averaging purposes regardless of whether the pollutant whose emissions are to be decreased is itself "more hazardous" than the pollutant with increased emissions. Using this approach, not only must the relative hazard of the pollutants be established but also the magnitude of the difference in hazard between pollutants. As the data and science concerning determination of the magnitude in difference between pollutants is limited, this approach is based on a number of policy judgments.

The EPA requests comment on the general issue of whether and how averaging may influence the toxicity and risk of emissions from HON sources. In addition, the EPA specifically requests comment on the two previously described alternative approaches to limit the potential for averaging to increase the toxicity of HON source emissions.

G. Selection of Reporting and Recordkeeping Requirements

The proposed rule would require sources to submit the following five types of reports:

1. Initial Notification,
2. Implementation Plan (if an operating permit application has not been submitted),
3. Notification of Compliance, Status,
4. Periodic Reports, and
5. Other reports.

The purpose and contents of each of these reports are described in this section. The wording of the proposed rule requires all draft reports to be submitted to the "Administrator". The term Administrator means either the Administrator of the EPA, an EPA regional office, a State agency, or other authority that has been delegated the authority to implement this rule. In most cases, reports will be sent to State agencies. Addresses will be provided in the General Provisions (subpart A) of 40 CFR part 63 that will be proposed in the future.

Records of reported information and other information necessary to document compliance with the regulation are generally required to be kept for 5 years. A few records pertaining to equipment design would be kept for the life of the equipment.

1. Initial Notification

The proposed rule would require owners or operators who are subject to subpart G to submit an Initial Notification. This report will establish an early dialog between the source and the regulatory agency, allowing both to plan for compliance activities. The notice is due 120 days after the date of promulgation for existing sources. For new sources, it is due 180 days before commencement of construction or reconstruction, or 45 days after promulgation of subpart G, whichever is later.

The notification must list the chemical manufacturing processes at the source that are subject to subpart G, and which provisions may apply (e.g., process vents, transfer operations, storage vessel, and/or wastewater provisions). A detailed identification of emission points is not required. The Initial Notification must include a statement of whether the source can achieve compliance by the specified compliance date.

The regulated industry anticipates that, due to the large number of sources and emission points required to comply with the HON, there may be delays in permitting processes, and there may be insufficient engineering services and control equipment to achieve compliance in the 3-year time period allowed for existing sources. If a particular source anticipates a delay that is beyond its control, it will be important for the owner or operator to discuss the problem with the regulatory authority as early as possible. Pursuant to section 112(d) of the Act, the proposed rule has provisions for 1-year compliance extensions to be granted on a case-by-case basis. Further discussion of compliance issues is included in section VII.H. of this notice.

2. Implementation Plan

The Implementation Plan details how the source plans to comply with subpart G. Implementation Plans are only required for sources that have not submitted an operating permit application. An operating permit application would contain all the types of information required in the Implementation Plan, so it would be redundant to require sources to submit both.

Existing sources must submit the Implementation Plan for points in averages 18 months prior to the compliance date. For emission points not included in an emissions average, the Implementation Plan is due 12 months prior to the compliance date. For new sources, Implementation Plans would be submitted with the Notification of Compliance Status. It is critical that regulatory authorities have the Implementation Plans well before the compliance date so they can plan their implementation and enforcement activities. The early submission of these plans may also benefit regulated sources by allowing them to receive any feedback on their control plans prior to the actual compliance dates.

The Implementation Plan for points included in an emissions average is required 18 months prior to the compliance date to allow time for review and approval of the average. Because of the complexities and site-specific nature of emissions averaging, an approval process is necessary to assure all parties that the specific plan will result in emissions credits outweighing debits. The Implementation Plans for points in averages must be more detailed and thorough than the plans for other emission points. The additional information is necessary for the reviewing authority to make an informed decision about approving the average. The projected credits and debits included in the Implementation Plan may be based on calculations, design analyses, or engineering assessments instead of measured values. This flexibility is provided because, in many cases, control measures will not have been implemented at the time the plan is due, and actual measurements would not be possible.

3. Notification of Compliance Status

The Notification of Compliance Status would be submitted 150 days after the source's compliance date. It contains the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests, TRE determinations, and design analyses. Further information on the requirements for performance tests and other methods of compliance determination are provided in section VII.B, C, D, and E of this notice for process vents, storage vessels, transfer operations, and wastewater, respectively.

Sources with a large number of emission points are likely to be submitting results of multiple performance tests for each kind of emission point. For each test method used for a particular kind of emission point (e.g., a process vent), one complete test report would be submitted. For additional tests performed for the same kind of emission point using the same method, the results would be submitted, but a complete test report is not required. Results would include values needed to determine compliance (e.g., inlet and outlet concentrations, flow rates, percent reduction) as well as the values of monitored parameters averaged over the period of the test. The submission of one test report will allow the regulatory authority to verify that the source has followed the correct sampling and analytical procedures and has done calculations correctly. Complete test reports for other emission points may be kept at the plant rather than submitted. This reporting system was established to ensure that reviewing authorities have sufficient information to evaluate the monitoring and testing used to demonstrate compliance with the HON while minimizing the reporting burden.

Another type of information to be included in the Notification of Compliance Status is the specific range for each monitored parameter for each emission point, and the rationale for why this range indicates proper operation of the control device. (If this range has already been established in the operating permit, it does not need to be repeated in the Notification of Compliance Status). As an example, for a process vent controlled by an incinerator, the notification would include the site-specific minimum firebox temperature that will ensure proper operation of the incinerator, and the data and rationale to support this minimum temperature. Table 6a presents illustrative examples of the kinds of limits, or ranges that might be set for monitored parameters. These ranges are provided only as a guide to possible values, and actual values should be determined based on the design and operating characteristics of the control device as well as process-specific considerations. For a full discussion of this approach and EPA's rationale, see section VII.H.2 of this notice.

TABLE 6A.—EXAMPLE RANGE LIMITS FOR CONTINUOUSLY MONITORED PARAMETERS

Control device	Parameters to be monitored	Example parameter ranges
Thermal incinerator	Firebox temperature[a]	Average firebox temperature must not be more than 28 °C (50 °F) below the average value measured during the most recent performance test.
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed	Average upstream temperature must not be more than 28 °C (50 °F) below the average value measured during the most recent performance test. Average temperature difference across the catalyst bed must be greater than 80 percent of the average temperature difference measured during the most recent performance test.
Boiler or process heater with a design heat input capacity less than 44 megawatts.	Firebox temperature[a]	Average firebox temperature must not be more than 28 °C (50 °F) below the average value measured during the most recent performance test.
Scrubber for halogenated vent streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent	Average pH of the scrubber effluent must not be more than 1 pH unit below the average value measured during the most recent performance test.
	Scrubber liquid and gas flow rates	Average scrubber liquid/gas ratio must be greater than 95 percent of the average value measured during the most recent performance test.

TABLE 6A.—EXAMPLE RANGE LIMITS FOR CONTINUOUSLY MONITORED PARAMETERS—Continued

Control device	Parameters to be monitored	Example parameter ranges
Absorber	Exit temperature of the absorbing liquid	Average exit temperature of the absorbing liquid must not be more than 11 °C (20 °F) above the average value measured during the most recent performance test.
	Exit specific gravity	Average exit specific gravity must be within 0.1 unit above or below the average value measured during the most recent performance test.
Condenser	Exit (product side) temperature	Average exit temperature must not be more than 6 °C (11 °F) above the average value measured during the most recent performance test.
Carbon adsorber	Total regeneration stream mass flow during carbon bed regeneration cycle(s)	Total regeneration stream mass flow for a regeneration cycle must not be more than 10 percent below the value measured during the most recent performance test.
	Temperature of the carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)]	Temperature of the carbon bed after regeneration must not be more than 10 percent or 5 °C more than the value measured during the most recent performance test.
All Control Devices (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the control device	Average concentration level or reading must not be more than 20 percent more than the average value measured during the most recent performance test.

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.

For emission points included in an emissions average, the notification would also include the measured or calculated values of all parameters needed to calculate emission credits and debits, and the result of the calculation for the first quarter. This information is needed to ensure that the points in the average are being controlled as described in the Implementation Plan and that the average itself is balancing as planned.

4. Periodic Reports

Periodic Reports are required to ensure that the standards continue to be met and that control devices are operated and maintained properly. Generally, Periodic Reports would be submitted semiannually. However, quarterly reports must be submitted for the emission points included in an emissions average. This reporting frequency is necessary to allow verification of the credit and debit balance on a quarterly basis. In addition, if monitoring results show that the parameter values for a particular emission point are outside the established range for more than 1 percent of the operating time in a reporting period, or the monitor is out of service for more than 5 percent of the time, the Administrator (or delegated regulatory authority) may request that the owner or operator submit quarterly reports for that emission point. After 1 year, the source can return to semiannual reporting, unless the regulatory authority requests continuation of quarterly reports.

The EPA has established this reporting system in order to provide an incentive (less frequent reporting) for good performance. Because of uncertainty about the periods of time over which sources are likely to experience excursions outside the parameter ranges or monitoring system failures, the EPA is seeking comment on the 1 percent and 5 percent criteria triggering more frequent reporting. In particular, data are requested on both the frequency of excursions and monitoring system downtime.

Periodic Reports specify periods when the values of monitored parameters are outside the ranges established in the Notification of Compliance Status or operating permit. For continuously monitored parameters, records must be kept of the parameter value recorded once every 15 minutes. If a parameter is monitored more frequently than once every 15 minutes, the 15-minute averages may be kept instead of the individual values. This requirement ensures that there will be enough monitoring values recorded to be representative of the monitoring period without requiring the source to retain additional data on file and readily accessible.

For some types of emission points and controls, periodic (e.g., monthly, quarterly, or annual) inspections or measurements are required instead of continuous monitoring. Records that such inspections or measurements were done must be kept; but results are included in Periodic Reports only if a problem is found. This requirement is designed to minimize the recordkeeping and reporting burden of the proposed rule.

For emission points included in an emissions average, the results of the quarterly credit and debit calculation are also included in the Periodic Reports, so the reviewing authority can ensure that the quarterly requirements for the average have been met.

The role of Periodic Reports for compliance purposes is described in section VII.H. of this notice.

5. Other Reports

There are a very limited number of other reports. Where possible, subpart G is structured to allow information to be reported in the semiannual (or quarterly) Periodic Reports. However, in a few cases, it is necessary for the source to provide information to the regulatory authority shortly before or after a specific event. For example, if a process change is made that causes a process vent to change from Group 2 to Group 1, the source must report the change within 90 days. For storage vessels, notification prior to internal tank inspections is required to allow the regulatory authority to have an observer present. For storage and wastewater, if an owner or operator requests an extension of the repair period or a delay of repair, the request needs to be submitted separately from the Periodic Reports because the requests require a quick response from the reviewing authority.

Certain notifications and reports required by the Part 63 General Provisions must also be submitted. These are described in section IX.A of this notice, "Coordination with Other Clean Air Act Requirements."

6. Possible Alternative Recordkeeping Requirements

The proposed rule requires sources to keep readily accessible records of monitored parameters. For those control devices that must be monitored continuously, records which include at least one monitored value for every 15 minutes of operation are considered sufficient. These monitoring records must be maintained for 5 years. However, there are some existing monitoring systems that might not satisfy these requirements. To comply with the HON, sources would have to replace these existing monitoring systems. As a result, the EPA is seeking data and comment on these existing monitoring systems.

Specifically, industry sources have informed EPA that some existing computer-controlled processes have monitoring systems that only store data that is outside some predetermined range of acceptable values. For example, these systems could be set to record and store all monitored values outside a range such as ±1 percent. If a monitored value did not exceed the specified range, no value would be stored. When the value exceeded the range, a value would be stored. It is then deemed that all data in between the stored values is the same as the last recorded value. This system could also be used to record those periods when a monitored parameter may be outside the parameter ranges established by the source to represent proper operation of a control device. Keeping only these records would dramatically reduce the data storage requirements.

Industry sources have also informed EPA that many existing process control computer systems obtain monitoring data much more frequently than every 15 minutes, but are not designed to maintain a record of such data for 5 years. Such systems use this extensive monitoring data to calculate average parameter values for the compliance period for the emission source (e.g., 3 hour average). The individual data points could be kept in an accessible record for a period of several days so that the averaging procedure could be verified, and then could be "written over" to conserve computer time and memory storage space. The average for the 3-hour compliance period would be retained in an accessible record for 5 years.

At this time, EPA does not have a sufficient understanding of these systems to ensure that they provide sufficient support data to accurately and reliably reflect the source's continued compliance. Therefore, EPA has not included them as a recordkeeping option in the proposed rule. Instead, EPA is seeking comment on whether and how these systems should be allowed for compliance with the recordkeeping requirements in the HON. Specifically, EPA is interested in: what criteria are used to determine the values that are stored by these existing monitoring systems; how the validity of the data is verified; the frequency of calibration for this type of system; how operators ensure the accuracy of the results from these existing systems; and what types of processes or controls are currently being monitored with these systems. In addition, EPA is seeking comment on how the requirements allowing the use of these systems to comply with the HON might be structured. Finally, EPA is seeking comment on the concept of determining compliance based on data that do not include values to represent the entire compliance period (i.e., absence of data indicating a violation would constitute evidence of compliance).

H. Selection of Compliance Provisions

1. Compliance Schedule

The compliance date for existing sources is 3 years after promulgation of the HON. The 3-year compliance time is required by section 112(i)(3) of the Act. The compliance date for new sources is the date of start-up or the date of promulgation, whichever occurs later, as specified by section 112(i)(1) of the Act.

During development of the HON, EPA received comment from the regulated community regarding the process that would be used to comply with the rule and certain difficulties that were anticipated. Because the HON will regulate such a large segment of SOCMI operations, the regulated community anticipates that there may be insufficient engineering services and control equipment to achieve compliance in the time allowed.

One way in which the proposed rule addresses this issue is to allow for a 1-year compliance extension on a case-by-case basis. Section 112(i)(3)(B) of the Act allows for site-specific 1-year extensions to be granted through the operating permit. However, because of the schedule for States to establish and implement operating permit programs, the 3-year compliance date for the HON may occur prior to the submission of permit applications or the approval of operating permits for some sources. With this potential timing difficulty in mind, the Administrator is proposing that HON sources be allowed to request extensions through a submittal other than the permit application in States where operating permit applications will not have been submitted prior to the due date for the HON Implementation Plan. The proposed rule allows the owner or operator of a HON source to request the 1-year extension from the Administrator with their initial notification or with a separate submittal at any point prior to the submission of an Implementation Plan.

The EPA is seeking comment on the significance of the potential difficulties of complying with the HON in the allotted 3 or 4 years. In addition, EPA is seeking comment regarding how these difficulties can be addressed within the confines of the statutory requirements of sections 112(d) and 112(i) of the Act. Specifically, EPA is seeking comment on what types of non-regulatory activities, such as technical assistance, can be provided to assist sources attempting to come into compliance with the HON.

2. Parameter Monitoring and Compliance Certification

The proposed Subpart G requires monitoring of control device operating parameters and reporting of periods when parameter values are outside site-specific ranges. Although in previous NSPS and NESHAP, the EPA has specified a pre-determined range of operating parameter values, such values could be considered inadequate given the increased importance of parameter monitoring in determining and certifying compliance due to the new requirements in Section 114 of the Act. For the proposed HON, EPA is requiring sources to establish site-specific ranges. Allowing site-specific ranges for monitored parameters accommodates site-specific variation in emission point characteristics and control device designs. Based on the information available at proposal, it appeared to be difficult to establish ranges or minimum or maximum values that would be applicable in all cases.

The proposed system for establishing operating parameter ranges attempts to balance the need for technical certainty and operational feasibility. The ranges may be established by performance testing supplemented by engineering assessments and manufacturer's recommendations. However, the performance test is not required to be conducted over the entire range of permitted parameter values because such a requirement could impose significant technical difficulties and costs on the source. The EPA believes that a performance test conducted for a smaller, yet representative, range of operating conditions can still provide a range for the operating parameters that ensures proper operation of the control device. For emission points and control devices where a performance test is not required (for example, a closed vent system and control device on a storage vessel), the range may be established by engineering assessment.

Under the NSPS and NESHAP programs, parameter monitoring has traditionally been used as a tool in determining whether control devices are being maintained and operated properly. However, section 114(a)(3) of the Act and § 70.6(c) of the operating permit rule (57 FR 32251) require the submission of "compliance certifications" from sources subject to the operating permit program.

In light of these requirements, the EPA has considered how sources subject to this rule would demonstrate compliance. The EPA has concluded that operating parameter monitoring can be used for this purpose. The EPA considered three alternatives for using continuous parameter monitoring in determining compliance. The first alternative was that each excursion of a parameter outside the established range would constitute a violation of the permitted operating conditions for the control device. The first alternative was not selected because correlation of operating parameters with performance of the control device is not exact and operation outside the parameter range is not necessarily indicative of improper operation and maintenance.

The second approach was to require corrective action to be taken within 24 hours of first recording the excursion. The excursion would only be considered a violation if the problem was not corrected within 24 hours. The second alternative also was not selected because of the associated recordkeeping burden and difficulties in verifying compliance. Another disadvantage of the second alternative is it did not provide an incentive for the source to avoid operation outside the parameter ranges.

The third approach was to excuse a certain number of excursions per reporting period based on evidence that a certain number of excursions could be expected even with properly operated pollution control devices. For example, the rule could excuse three excursions and, if there were fewer than three excursions in a semiannual period, the source could certify continuous compliance; however, if a fourth excursion occurred, it would be a violation of the permitted operating conditions.

The Administrator chose the third approach described above. The proposed rule requires the source to record daily average values for continuously monitored parameters. The daily average is the average of all of the 15-minute values generated by the continuous recorder during the operating day. If the daily average value is outside the established range, it must be reported. The EPA is proposing to allow from 3 to 6 excused excursions (3 to 6 operating days) per semiannual reporting period for each control device.

The daily averaging period was selected because the purpose of monitoring data is to ensure proper operation and maintenance of the control device. Because it often takes from 12 to 24 hours to correct a problem, this averaging period was considered to best reflect operation and maintenance practices. This averaging period therefore gives the owner or operator a reasonable period of time to take action. If a shorter averaging period (for example 3 hours) was selected, sources would be likely to have multiple excursions caused by the same operational problem because it would not be possible to correct problems in one 3-hour reporting period.

The proposed range of 3 to 6 days of excusable excursions per semiannual reporting period (or 1 to 3 days per quarterly reporting period) equates to roughly 1 to 3 percent of the days in the reporting period. The range of time allowed as excused excursions was selected based on information about the types of events that cause parameter excursions; the duration of typical excursions; and the frequency of the events that create excursions.

Examples of events that could cause excursions that would count toward the number of excused excursions are: a thermocouple failure in an incinerator; water contamination in a condenser; off-specification feedstocks; electrical problems; control valve problems such as leaky pneumatic drivers; and extreme environmental conditions. Events that would be considered malfunctions under the Start-up, Shut-down and Malfunction Plan required by the General Provisions (subpart A) are to be handled separately and would not be counted toward the allowed number of excused excursions for purposes of compliance with subpart G of the HON. In addition, the provision for excusable excursions is not meant to allow actions that are specifically disallowed by other sections of the HON or the General Provisions, such as bypass of a control device.

Comments on the proposed approach and the other alternative approaches that were considered and any other suggested approaches are requested. Regarding the proposed approach, comment is requested on the number of days or percent of operating time that should be allowed as excused excursions, and whether the number of excused days should decrease over time, after an initial break-in period. In particular, EPA requests that commenters submit data that might be used to better characterize the cost of such requirements, the relationship between operating parameter monitoring results and control device performance, and data that might indicate how many excursions are associated with proper operation and maintenance of various control devices. The EPA also requests comment on the availability of methods for continuous monitoring of operating parameters and whether such methods could be used for compliance determinations and certification.

VIII. Rationale for Provisions in Subpart H

A. Background

Equipment leak emissions refer to the loss of VOC's and VHAP's through the sealing mechanism separating process fluid contained in equipment from the atmosphere. Because of the large number of valves, pumps, and other components within a process unit, total emissions from such equipment can be large. Equipment leaks have been estimated to contribute about one-third of all routine (non-accidental) VOC emissions from the chemical industry.

Existing regulations adopted under sections 111 and 112 of the Act (i.e., 40 CFR 60, subparts VV, GGG, and KKK, 40 CFR part 61, subpart V) hereafter referred to as "existing rules") and in SIP's have been effective in heightening awareness of the significance of equipment leaks and in stimulating control efforts. These rules basically require that pumps and valves be inspected periodically for leaks with a portable hydrocarbon detector. If a VOC concentration greater than 10,000 ppm, as methane or hexane, is found, the component is identified as a "leaker" and maintenance is required to repair the leak. This approach is known as LDAR. When these rules were established, EPA estimated that emissions would be reduced by about 60 to 70 percent and that after control, leak frequencies would be approximately 5 percent.

Data gathered over the past several years on equipment leaks at some chemical plants indicate that much lower leak frequencies can be achieved. These data, however, did not identify specific factors that led to lower leak frequencies, nor indicate how low leak frequencies could be obtained at all chemical plants. Consequently, EPA saw a need for a new regulatory approach that would achieve low leak frequencies at all chemical plants. It was recognized that establishing such a regulation for as broad and varied a source category as chemical production units would be difficult. The challenges included determining how to achieve low leak frequency at all plants with a simple set of rules, how to provide more flexibility in achieving low leak rates than that provided by LDAR alone, how to apply standards across the industry using data from only a part of the industry, and the EPA's need to establish standards consistent with the MACT requirements of the Act.

On April 25, 1989, EPA announced its intention to establish a committee to negotiate a new approach for control of volatile organic chemical equipment leaks (54 FR 17944), and conducted an initial informational meeting on May 15, 1989, to determine among interested parties whether negotiation would be desirable. The participants at the initial meeting responded favorably to the concept of negotiation, and on September 12, 1989, EPA established a negotiating committee (54 FR 37725). The Committee met over a period of 1 year, holding nine 2-day meetings and one 1-day meeting, to resolve the various issues related to developing a MACT standard for equipment leaks. The Committee members are listed in Table 7.

TABLE 7.—LIST OF NEGOTIATORS, FACILITATOR, AND OBSERVER

Negotiators	Affiliations
Robert L. Ajax	Environmental Protection Agency.
Alfred Bickum	International Institute of Synthetic Rubber Producers.
Bruce Bowers	Standard Chlorine.
Linda Curran	Amoco Oil.
David Doniger, Allen Hershkowitz.	Natural Resources Defense Council.
David Dunn	Sterling Chemicals, Incorporated.
Larry Goodheart, Ellen Siegler.	American Petroleum Institute.
Jack Kace	Pharmaceutical Manufacturers Association.
Thomas Kittleman	Chemical Manufacturers Association.
Robert Majewski	Northeast States for Coordinated Air Use Management.
Les Montgomery	Texas Air Control Board.
Harvel Rogers	Jefferson County (Kentucky) Air Pollution Control District.
Gustave Von Bodungen.	Louisiana Department of Environmental Quality.
Facilitator:	
Phillip J. Harter	Consultant to EPA.
Observer:	
Nicolas Garcia	Office of Management and Budget.

The Committee considered the many factors and uncertainties associated with regulating equipment leaks at a wide variety of chemical plants and developed an acceptably balanced approach, weighing the need to be flexible, the technical uncertainties, the requirement for MACT standards, and the data limitations. At the final negotiating session, the Committee members conceptually resolved all outstanding major issues and decided to reach final agreement through a two-step process. The Committee members first agreed in principle to the regulatory language to be proposed and then concurred on a draft preamble to the regulation describing in detail the scope, application, effect, and rationale. All Committee members have agreed to support the standard as long as EPA proposes and promulgates a regulation and its preamble with the same substance and effect as the regulation and preamble that are the subject of the final agreement.

It is important to note that the parties to the negotiation concurred with the regulation when considered as a whole. Inevitably, in any negotiation, this means that some parties may have made concessions in one area in exchange for concessions from other parties in other areas.

B. Scope and Applicability

1. Source Categories

The negotiators originally were to develop standards for equipment leaks for 13 source categories that would be affected by the EPA's then expected HON. These source categories included both SOCMI and non-SOCMI source categories, and the standards under development would have applied to eight hazardous organic chemicals. Over the course of the negotiations, and in anticipation of the Clean Air Act Amendments of 1990, EPA saw the need to expand this scope to include not only the original HON source categories, but also all SOCMI processes that use as a reactant or produce one of the organic chemicals listed in the Clean Air Act list of 189 HAP's. The EPA identified 396 such processes. The Committee agreed to expand the scope of the negotiations to the larger group of SOCMI processes and to retain the non-SOCMI categories.

In addition, EPA determined that petroleum refinery processes would not be covered by these standards, regardless of whether the unit supplies feedstocks that include chemicals listed in § 63.183, and that MACT standards for petroleum processes would be established in a separate rulemaking. These standards also would not be applicable to other petroleum-related facilities, including those engaged in petroleum exploration, production, marketing, or transportation. Refinery processes not covered by this regulation include, but are not limited to, cracking, reforming, coking, and other processes that produce transportation fuels, heating oils, or lubricants. Table 8 presents a more detailed list of examples of refinery processes not included in the scope of this rule.

TABLE 8.—EXAMPLES OF REFINERY PROCESSES EXCLUDED FROM THE NEGOTIATED REGULATION

- Thermal processes
  - —Gas-oil cracking
  - —Thermal cracking
  - —Visbreaking
  - —Coking (fluid)
  - —Coking (delayed)
  - —Coking (flexi)
  - —Other
- Catalytic cracking
  - —Fluid
  - —Other
- Catalytic reforming
  - —Semiregenerative
    - —conventional catalyst
    - —bimetallic catalyst
  - —Cyclic
    - —conventional catalyst
    - —bimetallic catalyst
  - —Other
    - —continuous catalytic reforming
    - —conventional catalyst
    - —bimetallic catalyst
- Catalytic hydrocracking
  - —Distillate upgrading
  - —Residual upgrading
  - —Lube-oil manufacturing
  - —Other
- Catalytic hydrorefining
  - —Residual desulfurizing
  - —Heavy gas-oil desulfurizing
  - —Cat-cracker and cycle-stock feed pretreatment
  - —Middle distillate
  - —Other
- Fractionation
  - —Pipe stills
  - —Light ends
  - —Gas recovery units
- On-site transfer and blending operations of gasoline and other fuels
- Lube oil and specialties processes
- Catalytic hydrotreating
  - —Pretreating cat-reformer feeds
  - —Naphtha desulfurizing
  - —Naphtha olefin or aromatics saturation
  - —Straight-run distillate
  - —Other distillate
  - —Lube-oil "polishing"
  - —Other
- Alkylation
  - —Sulfuric acid
  - —Hydrofluoric acid
- Refinery polymerization processes
- Crude units (Atmospheric and vacuum)
- Refinery isomerization process

2. Relationship Between This Regulation and Future Regulations for Refinery Equipment Leaks

The Committee agreed on the following language to describe the relationship between this regulation and future regulations for refinery equipment leaks:

> The standards incorporated in this agreement were established by the Committee based primarily on data from well-controlled ethylene oxide plants and data from a number of SOCMI plants. The Committee did not review data from

petroleum refining processes because they were outside the scope of the negotiations, and the Committee did not consider whether the numerical standards in this agreement are achievable by refinery processes. The Committee recognizes that there are technical differences between SOCMI categories and petroleum processes that may affect the achievability of the numerical standards (including percent leakers). Potential differences include the availability and effectiveness of emission control technologies, plant shutdown practices, line sizes, process temperatures and process pressures, and cost. These differences could work in the direction of making the numerical standards adopted by the Committee more easily achievable, or less easily achievable, for refinery processes.

The Committee agrees that the framework used for the regulation developed during the current negotiation should be adopted in the MACT regulation for petroleum refinery equipment leaks unless there are sound technical reasons why a different framework would be more effective.

The American Petroleum Institute understands that the numerical standards included in this negotiated rule are more stringent than those that would have been selected if the rule had provided that exceedences of numerical standards, by themselves, constituted violations of the CAA. The American Petroleum Institute recognizes that this will also be true of the numerical standards that will be included in a MACT regulation for refinery equipment leaks utilizing the framework of the currently-negotiated regulation.

If EPA develops MACT refinery equipment leak regulations, it will conduct a separate rulemaking. Technical differences between SOCMI and refinery processes that may affect the achievability of the standards will be considered by EPA in the refinery equipment leak rulemaking.

3. Equipment

The negotiated rule would apply to those pieces of equipment which are regulated in the existing sections 111 and 112 equipment leaks rules, including all valves, pumps, compressors, pressure relief devices, open-ended valves or lines, connectors, closed vent systems and control devices, sampling connection systems, and product accumulator vessels. In the existing rules, connectors are referred to as "flanges and other connectors" or simply as flanges. To avoid potential misinterpretations of the negotiated rule and to eliminate redundancy within the phrase, the term connector is used in the negotiated standard to designate the same types of fittings which were previously termed flanges and other connectors; i.e., all flanged, screwed, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. The negotiated rule would not apply to flanges between sections of a vessel (e.g., body flanges on a distillation column reactor or heat exchanger, etc.), head gaskets on vessels, or access hatches (e.g., manholes). These types of seals are not included in the definition of connector.

The negotiated rule also contains provisions for agitators and instrumentation systems. The rationale for the inclusion of agitators and the separate treatment of components in instrumentation systems in the negotiated rule is discussed later under the basis for the negotiated rule.

The negotiated rule would apply to both existing and new process units. The negotiated rule categorizes the regulated processes into five groups and uses a staggered implementation scheme, requiring some process units to comply in ½ year, while others would comply as late as 1½ years after final promulgation of the rule. This staggered implementation was provided to alleviate the impact of applying the rules simultaneously to all sources.

An affected "process unit" means equipment that uses a VHAP as a reactant or produces a VHAP or its derivatives as intermediate or final product(s), including all equipment associated with the unit process operation, storage and transfer of feed material to the unit process operation and final or intermediate product from the unit process operation, and operations treating process wastewater (e.g., strippers, decanters) from the unit process operation.

The proposed standards would apply to chemical manufacturing processes operated to produce one or more of the chemicals listed in § 63.184. Examples of SOCMI production processes that would be subject are a unit process operation that produces ethylbenzene from benzene, a unit that produces phenol and acetone from cumene, and a unit that produces butadiene by separation from an impure mixed C–4 stream received from another plant site. Examples of operations that would not be considered subject to this standard are waste solvent reclamation or a SOCMI process using any of the chemicals listed in § 63.183 only as a solvent.

The standards would also apply to equipment handling specific chemicals for the non-SOCMI source categories listed in Section 63.160(c). These source categories and chemicals are: styrene-butadiene rubber production (styrene, BD); polybutadiene production (BD); chlorine production (carbon tetrachloride); pesticide production (carbon tetrachloride, methylene chloride, and ethylene dichloride); chlorinated hydrocarbon use in production of chlorinated paraffins, Hypalon®, OBPA/1,3-diisocyanate, polycarbonate, polysulfide rubber, and symmetrical tetrachloropyridine (carbon tetrachloride, methylene chloride, tetrachloroethylene, chloroform, and ethylene dichloride); pharmaceutical production (carbon tetrachloride, methylene chloride); and miscellaneous BD use (BD).

The lines within a unit process operation containing process fluids are considered to be part of the process unit and thus, subject to regulatory requirements, while lines and equipment not containing process fluids are not subject to these requirements. Utilities, and other nonprocess lines, such as heating and cooling systems, are not considered to be part of a process unit. For example, any direct heating and cooling systems, which generally service many processes at a plant and do not combine their materials with those in the processes they service, are also not subject to these requirements.

A plant site may consist of one or more process units. Process units covered by the negotiated rule are listed specifically in §§ 63.160 (b) and (c) of the negotiated rule.

C. Background Information on Equipment Leaks

This section presents an overview of findings from previous equipment leak studies and a summary of information that led to the EPA's decision to develop a new regulatory approach for equipment leaks through negotiation. This synopsis is not intended to reflect the Committee discussions. Rather, it is intended to provide basic information for readers unfamiliar with the existing standards, the underlying studies, and recent trends. More detailed information on the basis for the existing requirements and underlying studies is available in the dockets and **Federal Register** notices for the existing rules.

1. Overview of Background Information

One of the first published studies of equipment leak emissions was conducted in the 1950's in several petroleum refineries in the Los Angeles County Air Pollution Control District. The results of this study showed that a large quantity of hydrocarbons could be lost to the atmosphere from various sources such as valves, pump and compressor seals, flanges, and pressure relief devices. In the late 1970's and early 1980's, EPA conducted several studies to evaluate and quantify emissions from equipment leaks in petroleum refinery operations and in chemical process units. In these studies, EPA collected data and evaluated leak frequency, mass emissions, and methods and effectiveness of leak prevention. These studies showed that equipment leaks were a significant source of emissions and that the majority of emissions at that time were associated with equipment leaks measured at concentrations greater than 10,000 ppm.

In the EPA Refinery Assessment Study, data were gathered on equipment screening values (using a portable VOC instrument) and mass emissions. These data permitted the development of average emission factors and screening value/emission rate correlations. The study also provided other important results. Analyses to identify equipment or process variables (e.g., equipment manufacturer, age, or line size, process pressure, stream volatility) that affect leak frequency led to the separation of equipment component emissions by stream phase: gas/vapor, light liquid, and heavy liquid. These classifications have been used to design regulations based on leak potential.

In 1980, EPA conducted a study of equipment leak emissions from 24 individual SOCMI process units. In this study, the 24-Unit Study, EPA investigated leak frequency (at a concentration of 10,000 ppm) in equipment at 24 individual chemical process units. A study of the effects of maintenance on emissions was performed concurrently at six of the units screened in the 24-Unit Study. The data from these studies were used to develop average emission factors and screening value/leak rate correlations; to evaluate leak frequency as a function of process parameters and equipment design; to evaluate the effect of instrument response factors on leak frequency; and to estimate the effect of leak occurrence and recurrence rates on mass emissions. These studies also demonstrated that a program consisting of inspection of equipment and maintenance of the leaking equipment was an effective means of reducing emissions. The control measures identified at that time were estimated to achieve overall a 60 to 70-percent reduction in emissions from equipment leaks. The data and conclusions from the studies on petroleum refinery units and chemical process units served as a basis for the EPA's equipment leak regulations and guidelines that were issued in the early 1980's.

Information obtained in these studies also showed that leak frequencies varied widely among process units and source types and that factors that affect leak frequencies were not well understood. Specifically, studies such as the EPA's 24-Unit Study showed that the frequency of leaks greater than 10,000 ppm ranged from 0 to approximately 30 percent among 15 different chemical processes. Similar chemical processes also showed large differences in leak frequencies; for example, the leak frequencies for gas valves varied from 0 to 18 percent for three ethylene dichloride units. In subsequent studies, EPA evaluated leak frequency as a function of process parameters and equipment design and identified no single factor that determined leak frequency. Leak frequencies are believed to be a function of component design, specifications, construction, material, and age; quality and frequency of maintenance; operating and training practices used by the company; diligence; process fluids and operating conditions; and other unidentified factors. Current regulations adopted under sections 111 and 112 of the Act (e.g., 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V) require: (1) An LDAR program for valves in gas/vapor and light liquid service and pumps in light liquid service; (2) equipment for compressors, sampling systems, and open-ended lines; and (3) no detectable emissions (500 ppm as determined by Method 21) for pressure relief devices in gas/vapor service during normal operation. These rules do not require sources to achieve particular performance levels or to install particular equipment designs (e.g., DMS on pumps). As such, residual emissions will vary among process units and the best controlled units will emit less than typically or poorer controlled units.

2. Recent Studies

In the last 3 years, EPA has received information that shows significantly lower leak frequencies at 10,000 ppm for some chemical processes than was representative for the industry as a whole in the early 1980's. This information, not necessarily known by the industry in general, was one consideration in the EPA's decision to develop a new regulatory approach for equipment leaks through the regulatory negotiation process. The information considered by EPA is briefly summarized in the paragraphs below. In addition, where sufficient information is available, these data are included in Table 9 which shows leak frequency at several leak definitions by component type. In general, these data were collected following the procedures specified in Method 21, and the results represent a single monitoring survey conducted over a limited time period.

TABLE 9.—SUMMARY OF EQUIPMENT SCREENING DATA[a]

Unit ID	Valves 250	% 500	Leakers 1,000	Pumps 500	% 1,000	Leakers 2,000	Leakers 5,000	Connectors[b] 250	% 500	Leakers 1,000
EO 1	0.6	0.4	0.3	....	....	....	....	0	0	0
EO 2	2.8	2.2	1.1	0	0	0	0	0.9	0.9	0.9
EO 3	1.4	1.1	1.1	23	18	14	9	3.2	3.2	3.2
EO 4	2	1.3	0.9	36	27	9	9	2.8	1.5	0.7
EO 5	0.4	0.2	0.2	0	0	0	0	....	....	....
EO 6	1.6	1.4	1.3	....	....	....	....	4.1	4.1	4.1
EO 7[c]	1.2	1.2	1.2	0	0	0	0	0	0	0
EO 8	2.9	2.5	1.5	6	0	0	0	2.5	2.5	2.5
EO 9	5.3	4.5	4.1	25	25	25	25	7.6	5.9	4.9
BD 1	10.7	8.8	7.5	....	....	....	....	0	0	0
BD 3[c]	5.6	4.8	4.2	24	21	15	13	0.7	0.7	0.7
BD 4	7.3	6.3	5.4	2.9	0	0	0	10	8.6	7.1
BD 5	11	7.7	5.1	[d]50	....	....	....	3.4	1.5	1.1
BD 6	7.5	5.4	3.3	[d]33	....	....	....	....	....	....
BD 7	2.2	2.2	2.2	....	....	....	....	0	0	0
BD 8	21.9	18.4	15.1	58	50	41.7	41.7	7.4	6.7	5.9
BD 10	25	19.8	17.1	0	0	0	0	5.1	2.5	1.9
BD 11	11.3	10.1	8	16.7	16.7	16.7	16.7	1.4	1.4	0.7
BD 12	5.9	4.5	3.7	10	10	10	10	0.6	0.6	0.6

TABLE 9.—SUMMARY OF EQUIPMENT SCREENING DATA[a]—Continued

Unit ID	Valves 250	% 500	Leakers 1,000	Pumps 500	% 1,000	Leakers 2,000	Leakers 5,000	Connectors[b] 250	% 500	Leakers 1,000
Acrolein	0.1	0.1	0.1	4	4	4	4	0.1	0.1	0.1
Average SOCMI at 10,000 ppm	11.5	......	......	......	......	......	9	......	......	2.1

[a] Leak frequencies are not shown for phosgene units since all observations are "0."

[b] Data includes flanges, threaded fittings, unions, and any other pipe-to-pipe connections other than welds. The records are not sufficient to permit differentiating among types of connectors.

[c] Certain ranges of data for these facilities were discarded due to excessive rounding and truncation errors.

[d] Type of pump seal is unknown.

Units subject to the Benzene Equipment Leak National Emission Standards for hazardous air pollutants. During the EPA's reconsideration of the benzene equipment leak NESHAP (September 14, 1989, 54 FR 38044), EPA examined compliance reports from 1987 and 1988 for a randomly selected sample of 25 plants subject to the standard, which requires a 10,000 ppm LDAR program. This review showed that plants had more than 1.5 percent valves or more than 12.5 percent pumps exceeding 10,000 ppm. The average frequency of sources exceeding 10,000 ppm was lower than the average frequencies of 3 to 5 percent for valves and approximately 10 percent for pumps which had been expected after application of the standard.

Acrolein process units. In 1989, EPA received screening data and process information on two acrolein process units. These data were collected voluntarily by the company to provide better emission estimates than could be obtained using the SOCMI average factors. The monitoring data represented eight types of equipment (gas valves, light liquid valves, light liquid pumps, flanges and other connectors, pressure relief valves, sample points, open-ended lines and compressors). These monitoring data were collected following the procedures specified in "Protocols for Generating Unit-Specific Emission Estimates for Equipment Leaks of VOC and VHAP", (Protocols) EPA–450/3–88–010. In general, particular care was taken in measurements of equipment with screening values of less than 200 ppm. In addition, one of the units had approximately 60 percent sealed bellows valves and the other unit had no sealed bellows valves.

The screening data indicated average leak frequencies of 0.26 to 0.09 percent for valves and of 0.13 to 0 percent for flanges and other connectors at leak definitions of 100, 1,000, and 10,000 ppm. These data showed that both conventional and sealed bellow valve designs can achieve very good performance with few leaking valves. The observed leak frequencies of all components were substantially below the levels found by EPA in studies conducted in the early 1980's.

Amine unit—West Virginia. In 1987, EPA received monitoring data for two process units handling amines. These units were selected for testing because of the service conditions (i.e., high temperature and high pressure) and high vapor pressures of the process materials. One unit (Unit 1) was characterized as handling relatively nontoxic and innocuous substances and the other unit (Unit 2) was characterized as handling a more toxic compound, one with a threshold limit value of 10 ppm. These data were collected voluntarily by the company to calculate a unit specific emission estimate using the EPA's leak/no leak emission factors. Monitoring data were provided for pumps, valves, and flanges and other connectors.

The monitoring data for Unit 1 showed 33 percent of the pumps, 16 percent of the light liquid valves, 27 percent of the gas valves, and 0.4 percent of the flanges and other connectors exceeding 10,000 ppm. Unit 2 had 5.6 percent of the pumps, 0.8 percent of the light liquid valves, 1 percent of the gas valves, and 0.1 percent of the flanges and other connectors exceeding 10,000 ppm.

Ethylbenzene/styrene unit—Texas. Limited information was received on screening values measured at this facility's EB/S process unit, which is subject to the benzene equipment leak NESHAP. Screening data were provided for a total of approximately 2,500 valves and pumps. The data were provided as time aggregated summaries of screening values for a 1-year period from 1987 to 1988. These data indicated that 99 percent of the time the valves and 90 percent of the time the pumps had screening values less than 500 ppm. Information submitted for compliance with the benzene equipment leak NESHAP showed on an annual average basis 0.04 percent of the valves and 3.6 percent of the pumps exceeded 10,000 ppm. No description was provided of the procedures used in the data collection, other than that Method 21 was used.

Chemical Manufacturers Association studies of Butadiene, Ethylene Oxide, and Phosgene process units. In addition to the preceding information, comprehensive screening data were also provided to EPA on 33 BD, EO, and phosgene production process units. The monitoring data represented eight types of equipment (gas valves, light liquid valves, light liquid pumps, flanges and other connectors, pressure relief valves, sample points, open-ended lines and compressors) at essentially all BD, EO, and phosgene producers operating in the United States. These data were collected voluntarily by the CMA committees to provide EPA with better industry-wide estimates of emissions from equipment leaks at these process units than could be obtained using EPA average factors for SOCMI. These monitoring data were collected following the procedures specified in the Protocols. These studies provide the most comprehensive equipment screening data available that document the full range of leak frequencies for large numbers of process units used for the production of specific chemicals. The EPA also obtained information on the plant work practices, operations, and the equipment design specifications. Conditions in the equipment surveyed spanned a wide range of temperatures and pressures [10 °C to 288 °C and 136 to 3,550 kPa (50 °F to 550 °F and 5 to 500 pounds per square inch gauge)], as well as a range of line diameters (0.5 inch to greater than 6 inches).

The screening data indicated that most process units at these facilities are characterized by equipment leak frequencies far below levels found by EPA in studies conducted in the 1970's and 1980's. In addition, the data base indicated much lower leak frequencies at the phosgene process units than at the EO and BD units, and the EO units in general had lower leak frequencies than the BD units. Table 9 presents the plant-specific leak frequency data by component type, at various leak definitions for the three processes. The data shown in Table 9 are the screening data that were judged to be consistent with proper calibration and use of the test equipment. The screening values for the ten BD and nine EO process units were also adjusted for the instrument response factor to represent more accurately the screening concentration of equipment in BD or EO service. The data presented in Table 9 represent process units in various stages of control and operations. Some plants operated using formal LDAR programs and others did not; some units were screened just before a shutdown for maintenance and others were screened just after startup following a scheduled maintenance shutdown.

The above information, when compared with the earlier studies and analyses indicated to EPA that the performance capability of available technology is better than had been expected from a 10,000 ppm LDAR program alone. Furthermore, analyses of these data showed, like earlier studies, that no single factor or technology was responsible for the better performance. Rather, the recent data confirmed that effective leak control involves a combination of factors. For example, statistical analysis of the recent EO and BD data failed to identify specific process parameters or equipment designs that alone would significantly affect leak frequencies.

D. Development of Framework and Selection of Maximum Achievable Control Technology

Selection of MACT for equipment leaks, unlike many other source types, requires a balancing of a number of interrelated factors and is not based on identification of a specific best control technique or approach. The following discussion explains the Committee's assessment and consideration of the available data in the development of the framework as well as the selection of MACT.

1. Information Considered

In deliberations over the framework, the Committee considered screening data from the CMA surveys of EO, BD, and phosgene production units as well as data and information from other process units. The additional information considered included data provided on an EB/S process unit and on three facilities in Texas subject to a 500 ppm leak permit condition. The information available for the EO, BD, and phosgene units, and for the EB/S unit was described in the preceding section. The information provided on the three facilities in Texas is described below.

a. *Texas Air Control Board data.* Additional data from three plant sites were provided by the Committee member representing the TACB. These plants are subject to a Texas regulation that requires LDAR with directed maintenance at a 500 ppm leak definition. This requirement has been applied as of the permit program for new and modified sources. Data were provided for cumene, phenol/acetone, and butyraldehyde/butanol process units which had been operating a 500 ppm LDAR program for 1 to 6 quarters. These units had average leak frequencies at 500 ppm for valves ranging from 0 to 3.6 percent. The average leak frequency at 500 ppm reported for pumps varied from 0 to 20 percent in the first period and from 3.6 to 5 percent in the second period. Average leak frequencies for flanges varied from 0 to 2 percent. These data show for several chemicals that a 500 ppm LDAR program is effective and will significantly decrease leak frequency.

b. *Plant visit.* In addition to considering the available screening data, several members of the Committee visited three integrated chemical plants, one of which had 20 operating units including a phosgene unit, a toluene diisocyanate unit, and a hydrogen fluoride unit. One conclusion drawn from these visits was that the acute toxicity of phosgene and toluene diisocyanate, combined with other features of these units, has resulted in the routine use of a number of effective leak control practices in these process units. Measures taken to prevent and minimize leaks in phosgene and isocyanate units include design to minimize the number of components, stringent quality assurance/control programs, bench testing of equipment for leaks, and careful management and extensive continuous monitoring of the unit to detect leaks and problems. In addition, phosgene and isocyanate units are shut down for immediate repair whenever any leak is detected. Immediate shutdown is possible because phosgene and isocyanate process units are small and are not operated as of an integrated process. In units where less acutely toxic compounds are used or produced and in facilities where operations are large scale and highly-integrated, such measures were not observed and the units are not (and cannot be) immediately shut down for repair whenever a leak is detected. Rather, shutdown of facilities with large integrated processes can require several days to cease production, followed by up to several weeks to drain and decontaminate the process equipment prior to actually initiating repair. These units are typically operated for a fixed time period before they are shut down for maintenance and repair. Representative operating times between scheduled shutdowns range from 3 months to several years.

The Committee also concluded that equipment design and an on-going quality control/assurance program has a significant role in achieving low leak frequencies. This conclusion was supported by remarks made to the Committee by a chemical industry representative who described his company's recent experience with two EO production units. Following completion of a screening study, the company undertook a program to reduce the leak frequency and emissions from the units. Steps taken consisted of component inspection, complete or partial replacement of over 700 valves and 2,000 gaskets, modification of design to reduce leaks, and regular monitoring and inspection for leaks. The company reported that there was an overall reduction of about 80 percent in the number of leaking components following completion of this project.

2. Committee Analysis and Consideration of the Data

The Committee considered the data and information described in the preceding section and concluded that the EO, BD, and phosgene data should serve as the principal basis for establishing the performance of MACT for SOCMI processes. The EO, BD, and phosgene data, however, were considered in light of the broader data; especially, the Texas 500 ppm LDAR program and the site visits. On this basis, the Committee agreed that phosgene units are not similar in design, operation, and maintenance to most SOCMI processes. Some of the maintenance and operating practices for phosgene units control programs went beyond MACT for other SOCMI processes. One example of this is the practice of immediate shutdown. Immediate shutdown is economically and technically infeasible for other processes because shut down of the one unit would require shut down of all the integrated operations at the site and it would be impractical to clear large volumes of chemicals in short time frames. In some cases, emissions from clearing process material from or all of the units could greatly exceed the emissions that would result from the leaking equipment. Therefore, while the phosgene units' performance did provide an indication of the potential for leak reduction, the Committee concluded that the EO and BD units are more representative of the range of processes in SOCMI than are phosgene or toluene diisocyanate units. The Committee did recognize, as indicated by the framework and the base performance levels, that low leak frequencies are generally achievable at chemical plants and that the rule should encourage attaining low emissions.

From the data and observations, the Committee also concluded that low emission performance results from combinations of monitoring (or surveillance), repair of leaking equipment, use of quality assured and quality controlled equipment suitable for the process operating conditions, and a quality controlled maintenance and repair program. The Committee concluded that such combinations are MACT for SOCMI processes. The information available did not identify any single factor, such particular equipment design or specific work practices or maintenance programs that by itself would guarantee low emission performance in all cases. Furthermore, the Committee did not identify the results at any one specific process unit or performance level as representing MACT performance because there is no apparent break point that represents a limit of what is achievable with a combination of technologies that are available. Thus, the Committee identified the best performing EO process units, the EB/S unit, the Texas 500 ppm units, and possibly the best performing BD process units (for pumps) as reflecting the performance of MACT for production processes involving HAP's.

3. Regulatory Approach

Because available information indicated that best performance for equipment leaks could not be defined or reflected in a single numerical standard, type of technology, or group of work practices, the Committee focused on developing a regulatory framework that, when combined with performance levels, would reflect MACT. Key principles that evolved during the negotiations and that led to the regulatory framework are:

(1) Incentives should be included in the standard to reward good performance and prescribed corrective actions should be included to ensure poor performance is improved in a timely manner.

(2) Flexibility in achieving specified results is important. This is necessary to allow consideration of process to process variations in operating conditions and equipment specifications and to provide incentives for identifying the most effective combination of equipment and practices.

(3) Identifying, designing, and implementing systems to meet the specified results requires varying amounts of lead time. Effective control requires continual analysis and adjustment, and may involve several technologies which cannot be identified or applied at one time or in one step.

(4) More frequent monitoring and maintenance or a prescribed program should be employed, at a minimum, for those process units that do not achieve the specified results through a program of their own design or through quarterly inspection and maintenance alone.

(5) There is insufficient information available to set an enforceable not-to-be-exceeded standard. The existing information is too limited in scope to predict with certainty what level of performance could be achieved by processes for which no data were available.

The majority of the Committee deliberations concerned development of a regulatory framework and performance levels that would incorporate the above key principles, while reflecting the performance of MACT. These deliberations primarily focused on developing provisions for valves, pumps, and flanges because these emission sources offered the greatest potential for emission reductions. The Committee used the existing LDAR program as a starting point for development of the framework for these sources. Early-on, the Committee recognized the need for a phased-in approach for valves and pumps that would provide time for plants to develop and implement effective programs and to focus on larger emission sources first. The phased-in approach is necessary because effective control requires continual analysis and adjustment of programs as experience is gained. The Committee defined MACT for pumps and valves in terms of three phases of requirements of increasing stringency. Each phase, as it occurs, reflects the performance of MACT for units in that phase.

The Committee also deliberated on several methods of linking monitoring frequency with performance and of providing incentives to use low emission equipment or to reduce the amount of equipment in VHAP service. The final decision was to link reduced monitoring frequency with lower leak frequencies, and to give credit for removal of equipment or use of low leak design equipment. The performance format of the standards would also encourage the use of low-leak technologies. This approach is consistent with the data which indicate that there are combinations of technology, maintenance practices, and quality assurance programs that can achieve very low leak frequencies while using less frequent monitoring intervals.

The Committee also debated whether to require shut down of process units for repair of leaking equipment whenever performance deteriorates below some specified performance level. The Committee ultimately concluded that process units should not be shut down to meet a performance level. It was generally agreed that clearing of process materials could cause greater emissions than delaying repairs until the next scheduled shutdown.

The Committee also agreed to retain the provisions of the existing equipment standards for pressure relief devices, sample points, open-ended lines, product accumulator vessels, and compressors. The existing standards for these items of equipment require installation of equipment or control devices and essentially eliminate emissions from equipment leaks. The Committee considered these requirements to be MACT.

For the valve, pump, and connector standards, the Committee primarily used the data from the better-performing EO units, the best-performing BD units (for pumps only), the Texas 500 ppm units, and the EB/S unit to establish the performance levels for the monitoring frequency. A major consideration in the selection of performance levels was the understanding that the levels are interrelated with the framework and phasing and are not necessarily the levels that would have been chosen for a not-to-be-exceeded standard. In the case of the valve standard, the selection of the base performance levels was also influenced by the inclusion of provisions that provide an alternative to monthly monitoring. Referred to as the QIP, this program ensures that plants subject to this QIP replace poorer performing valves (during normal replacement) with superior performing technologies until less than 2 percent leaking valves is achieved and implement a quality assurance/control program to ensure that all elements of MACT are utilized. Also, the QIP was included in the framework to allow those process units that do use all elements of MACT but do not achieve the specified numerical performance levels to remain on a quarterly monitoring schedule instead of increasing monitoring frequency.

The basis for the selection of the base performance levels and other elements of MACT for valves, pumps, and connectors is discussed below. The basis for the other provisions of the valve, pump, and connector standards as well as the other specific requirements of the regulation is given in Section VIII.F of this preamble.

a. *Valves.* For valves, the Committee initially considered both equipment standards and LDAR programs and ultimately agreed upon a three-phase LDAR program. Initially, the Committee considered requiring the use of equipment such as sealed bellows valves because the equipment is often believed to have zero emissions. This option was not selected for several reasons. First, these valves are not suitable for use in all operating conditions and services encountered in SOCMI processes. Specifically, these valves cannot be used in corrosive streams, with gritty materials, or in extremely high pressure or temperature conditions. Second, sealed bellows valves can leak internally, and will eventually fail. When failure occurs, there is potential for massive leaks. Due to this possibility for leaks, monitoring of these valves is necessary. Considering this, the Committee thought that the leak detection, repair, and base performance level standards framework described above would best reflect MACT. This approach allows and would give credit for any low emission performing valve regardless of its design.

The Committee considered several LDAR programs which tied monitoring frequency to the performance level achieved and created a framework that consists of several combinations of work practices and performance levels. In determining the maximum monitoring frequencies for Phase III, the Committee considered requiring weekly monitoring and monthly monitoring. The Committee agreed that a monthly program would be generally feasible and would reduce emissions, while being sufficiently costly to provide an incentive for owners of such sources to identify more cost-effective approaches. For plants that do not achieve the performance level required for quarterly monitoring of valves, the standard requires monthly monitoring or participation in the QIP program. In addition, the Committee also decided to allow less frequent monitoring to provide an incentive to achieve better performance than that required for the base quarterly monitoring program. Annual and semi-annual frequencies were selected for the incentive programs.

In selecting the base performance level and leak definition, the Committee considered the performance of the better performing EO units and the performance of the units subject to the Texas 500 ppm standard. Using these data, the Committee considered leak definitions in the range of 50 to 2,000 ppm and performance levels from 1 to 5 percent leaking valves. These data and the fact that, in practice, low leak frequencies were achieved by a 500 ppm LDAR program alone supported the practicality and achievability of a performance limit for a quarterly LDAR program of 2 percent leaking valves at a 500 ppm leak definition. Leak definitions lower than 500 ppm were not selected due to some Committee members' concerns regarding the practical ability to measure and repair smaller leaks. In contrast, other members of the Committee favored leak definitions lower than 500 ppm. Ultimately, a leak definition of 500 ppm was selected in light of data demonstrating the practicality and current implementation of a 500 ppm LDAR program. The Committee also agreed that units with less than 1 percent leaking valves could monitor the valves semiannually and those with less than 0.5 percent leaking valves could monitor annually. These performance levels were selected considering the Committee had previously agreed to exclude nonrepairable valves (up to a maximum of 1 percent of the total number of valves in VHAP Service) from the calculation of percent leaking valves (see Section VIII.F.4 of this notice for discussion of the basis for the nonrepairable provision). These performance levels have been demonstrated by the better performing EO process units, the EB/S unit, and by the plants subject to the Texas 500 ppm regulation. The Committee considered these levels to represent the performance of MACT.

b. *Pumps.* In deliberations on the standard, the Committee considered the data summarized in Table 9, additional analyses of the EO/BD data, and the comments of pump seal manufacturers. The EO/BD data showed pump leak frequencies and overall performance to be highly variable with leak frequencies ranging from 0 to 50 percent at a 1,000 ppm leak definition. Additional analyses were done to compare the performance of DMS and SMS pumps. These comparisons showed that the performance of both DMS pumps and SMS pumps varied widely among the process units. In general, DMS pumps screened at less than 500 to 1,000 ppm. In some cases, the SMS pumps screened at less than 100 ppm and could be viewed as having comparable performance to that of DMS pumps. For the majority of SMS pumps screening at less than 10,000 ppm, the screening values were fairly uniformly distributed from 100 to 9,100 ppm. Thus, the data did not provide a clear indication of the performance level that can be achieved by SMS without incurring high maintenance costs.

From its consideration of the available data, the Committee generally concluded that pumps equipped with DMS, as a group, have lower leak frequencies than those equipped with SMS. Consequently, the Committee deliberated at great length on whether MACT is reflected by an equipment standard for DMS on all pumps or by a performance standard. The Committee decided not to establish an equipment standard because DMS are not suitable for use in all cases and because a DMS equipment standard would be very costly and would preclude effective lower cost options. Dual mechanical seals cannot be used with materials where leakage of the barrier fluid would affect product purity (such as with medical products), with polymerizing monomers, or on reciprocating pumps. Also, the pump casing of some existing packed seal and SMS pumps does not allow installation of a DMS assembly. In such cases, a DMS equipment standard would require replacement of the entire pump. The cost of a DMS equipment standard was considered in a general sense; however, no agreement was reached on the cost of installation of DMS systems or on the cost of a DMS equipment standard, including the cost of pump replacements. The opinion that a DMS equipment standard would be very costly was based on general knowledge and the experience of some Committee members. However, to give all Committee members some perspective on the potential costs, EPA provided an estimate of the annualized cost for retrofitting an existing pump with a DMS system. This estimate showed the cost would be approximately $2,200 per year (1990 dollars) for each pump in VHAP service. In previous rulemakings, EPA has estimated that a requirement of DMS on pumps has an incremental cost effectiveness over a 10,000 ppm LDAR program of $5,600/Mg ($5,080/ton) of total VOC or pure VHAP (1978 dollars), which is comparable to approximately $15,000/Mg ($13,600/ton) in 1990 dollars. Some Committee members expressed an additional concern that a DMS equipment standard would have a significant adverse economic effect on small producers.

To establish a performance standard that would reflect MACT for pumps, the Committee considered the performance capabilities of SMS (and packed seals) compared to the performance, applicability, and cost of DMS. Discussions among the Committee members, chemical industry representatives, and pump seal manufacturers led to the conclusion that it is not possible to identify precisely best performance levels achievable by SMS and that, although advances in technology could reasonably be expected over the next 5 years, the limits on these advances could not be established. Because of technical limitations on the use of DMS on pumps in food/medical service and the use of mechanical seals on pumps handling polymerizing monomers, the Committee agreed to establish separate performance standards for pumps in those two services.

For pumps in general chemical service, the Committee agreed to establish 1,000 ppm as a performance target reflecting MACT and to establish 2,000 ppm as the concentration at which repair is required. The Committee agreed to require repair of pumps with an instrument reading greater than 2,000 ppm as a result of some Committee members concerns that repair at lower concentrations could result in significant and costly maintenance, with little to no emission reduction. The Committee also concluded that a 10 percent leak frequency (or three leaking pumps) is the appropriate point to impose a QIP that includes a mandatory replacement provision, if the leak frequency remains greater than 10 percent. On balance, it was believed that this combination of requirements would provide the time and incentive needed to achieve best performance from SMS, would allow use of SMS where they can achieve low emissions, and would allow use of both SMS and DMS pumps, as appropriate, to achieve the standard.

For pumps in food/medical service, the Committee selected 2,000 ppm and 10 percent leak frequency as the performance level. The leak definition was set at 2,000 ppm to account for the limited applicability of DMS pumps and the uncertainty that SMS seals could achieve lower performance levels without excessive replacements in this service. The Committee also agreed that processes with pumps in food/medical service that exceed 10 percent leaking pumps would not be subject to the mandatory replacement provisions in the QIP.

For pumps handling polymerizing monomers, the Committee selected 5,000 ppm and 10 percent leak frequency for the performance level. As mechanical seals cannot be used on pumps in polymerizing monomer service, industry representatives generally maintained that pumps in this service could not achieve a 2,000 ppm leak performance level. The Committee ultimately agreed to the 5,000 ppm leak definition based on expert judgment that 5,000 ppm would reflect best performance and on the general lack of data for pumps in this service. It was also agreed that facilities that exceed 10 percent leak frequency would not be subject to the mandatory replacement provision of the QIP.

c. *Connectors.* Provisions for a LDAR program for connectors were developed after the Committee generally agreed that connectors could be a significant source of emissions at a well-controlled plant and that emissions could be reduced. In the development of these provisions, the Committee considered the data summarized in Table 9 and the contribution of connector emissions to total emissions for several EO/BD process units. These data showed a range of connector leak frequencies at different leak definitions (e.g., 3 percent at 10,000 ppm to less than 2 percent at 250 ppm) and showed that connectors could be a significant source of the total emissions. Some Committee members believed the relatively high leak rates observed at some process units were a result of infrequent or no inspections and maintenance. The Committee agreed that connector leaks should be controlled, therefore, a LDAR program was established to ensure that low leak frequencies are attained.

In development of these provisions, the Committee agreed that LDAR can reduce connector leak frequencies and that assuring MACT performance requires less frequent monitoring than is necessary for pumps or valves. Less frequent monitoring is needed because connectors have no movings and once repaired they should remain leak free for extended periods. Information provided by industry members on the Committee indicated that a number of actions can be taken to reduce or eliminate leaks. In most cases, it was expected that tightening the flange bolts on flanged connectors would eliminate the leak. It was also expected that in other cases it may be necessary to replace the gasket or to correct faulty alignment of surfaces. These latter cases are expected to be relatively infrequent. The Committee, therefore, decided that annual monitoring was reasonable. The Committee also concluded that process units that demonstrate sustained performance at the level of the standard should be allowed to monitor less frequently than annually. This concept is similar to the skip-period provisions for valves in the existing equipment leak regulations. This approach is consistent with quality control principles and the Committee concluded that this approach will ensure MACT performance.

The Committee selected the performance level and leak definition considering the data from the EO/BD units, the Texas 500 ppm units, and the general conclusions drawn from the Committee's discussions. These data and the fact that, in practice, low leak frequencies were achievable persuaded the Committee that a leak definition of 500 ppm and a base performance level of 0.5 percent leaking connectors would reflect MACT. Process units that have 0.5 percent, or greater, leaking connectors are required to implement an annual LDAR program for connectors. Process units that have less than 0.5 percent leaking connectors are allowed to monitor all connectors in a biennial or quadrennial program.

E. Selection of Format of Standards

Under section 112 of the Act, national emission standards must, whenever possible, take the format of a numerical emission standard. Typically, an emission standard is written in terms of an allowable emission rate (mass per unit of time), performance level (e.g., 90 percent control), or an allowable concentration. These types of standards require the direct measurement of emissions to determine compliance. For some source types, emission standards cannot be prescribed because it is not feasible to measure emissions. Section 112(h)(2) recognizes this situation by defining two conditions under which it is not feasible to establish an emission standard. These conditions are: (1) If the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant; or (2) if the application of measurement methodology is not practicable due to technological and economic limitations. If an emission standard cannot be established, EPA may instead establish a design, equipment, work practice, or operational standard or combination thereof.

For equipment leak sources, such as pumps and valves, EPA has previously determined that it is not feasible to prescribe or enforce emission standards. Except for those items of equipment for which standards can be set at a specific concentration, the only method of measuring emissions is total enclosure of individual items of equipment, collection of emissions for a specified time period, and measurement of the emissions. This procedure, known as bagging, is a time-consuming and prohibitively expensive technique considering the great number of individual items of equipment in a typical process unit. Moreover, this procedure would not be useful for routine monitoring and identification of leaking equipment for repair.

The proposed standards incorporate several formats: equipment, design, base performance levels, work practices, and operational practices. Different formats are required for different types of equipment because of the nature of the equipment, available control techniques, and applicability of the measurement method. In the next section, the rationale for selecting particular format is explained for each type of equipment. For each source type, the feasibility of prescribing or enforcing an emission standard is discussed.

F. Selection of Emission Limits and Work Practice Requirements

1. Applicability

The Committee considered and ultimately established several additional applicability criteria that further defined the scope of the negotiated standard. This section presents the Committee's consideration of minimum VHAP concentration, time in VHAP service, and pilot plants and research facilities.

a. *Stream volatile hazardous air pollutant concentration.* The Committee discussed at some length what minimum concentration should be used for determining applicability of the negotiated standard for specific streams within an affected process. This minimum concentration was of particular concern to industry members of the Committee because there are trace quantities of VHAP in many process streams. The number of equipment components potentially subject to the standard and the associated costs increase substantially as the concentration is decreased; and the emission reduction becomes small. Other Committee members were concerned that emissions from equipment handling streams containing low VHAP concentrations (e.g., less than 10 percent) become relatively more significant as higher concentration streams are controlled. Based on these considerations, the Committee agreed the standard would apply to equipment containing or contacting process materials that are 5 percent VHAP or greater. In SOCMI processes, this concentration was viewed as being a point of relatively low emissions and diminishing returns.

b. *Time-in-VHAP service.* In certain chemical plants, particularly batch processes which produce a number of different products, there is equipment that is used in VHAP service only occasionally. In such cases, implementation of the standard could be difficult and would achieve very little emission reduction. Pumps and compressors used only during startup or shutdown of a process unit are one example of such equipment. Other examples include equipment used in batch pharmaceutical processes or batch steps in continuous processes. For these situations, the Committee concluded that equipment that is operated 300 hrs/yr, or less, in VHAP service should be exempt.

c. *Research facilities.* Exemption of research facilities (including pilot plants) from the negotiated standard was discussed on several occasions by the Committee. Some members thought that frequent changes in operations at these facilities would make compliance with the standard difficult or would incur unnecessary costs. Other Committee members were of the opinion that the negotiated standard should apply equally well to pilot plants and research facilities as production units, and that chemical industry pilot plants can be quite large and have substantial emissions. An additional concern expressed by some members was that any exemption should be based on objective criteria, not the intended use of the material or the purpose of the facility. The Committee did not resolve this issue, and concluded that the final Clean Air Act Amendments should dictate the disposition of research facilities, as several versions of the pending legislation provided for limited exemptions.

The final amendments, however, are not definite on how to deal with research facilities and leave it to the EPA's discretion to "* * * establish a separate category covering research or laboratory facilities, *as necessary* (emphasis added), to assure the equitable treatment of such facilities." (Section 112(c)(7).) The issue of regulating research facilities extends beyond equipment leaks, because research facilities can also have other emission points such as process vents or storage tanks. During preparation of this preamble, after enactment of the Clean Air Act Amendments, a consensus of Committee members was reached that it was more appropriate to address research facilities in the overall HON and to deal with it outside the negotiation, since no consensus was reached during the negotiation and the issue is broader than the negotiated rule. Consequently, those portions of today's notice addressing the regulation of research facilities are not of the negotiated agreement and may be commented on by the negotiators.

2. Compliance Dates

In developing the compliance schedule and framework of the standards, the Committee anticipated the Clean Air Act Amendments requirement that compliance dates for each category apply as expeditiously as practicable, but not later than 3 years after the effective date of the standards. The Committee recognized in the selection of compliance dates that the equipment leak regulation is primarily a work practice standard. Unlike standards that require installation of control equipment, the equipment leak regulation does not require major installation of equipment or large capital expenditures. Also the time needed to identify all components in VHAP service, establish a recordkeeping system, obtain monitoring equipment, and initiate an inspection and maintenance program is relatively short. Based on these considerations, and recognizing that advance notice would be provided when the rule is proposed in 1991, the Committee concluded that 6 months after promulgation was a reasonable lead time for compliance with Phase I.

An additional concern to the Committee in establishing the compliance schedule was the potential for the negotiated rule to overwhelm the resources of both industry and regulatory agencies because of the large number of affected facilities (about 1,000 process units) expected. The Committee considered several methods of distributing the peak demand for equipment and staff, and ultimately agreed to a staggered implementation schedule that spreads the compliance over a 1-year period. The affected source categories were divided into five groups roughly based on the carcinogenicity and weight of evidence for the chemicals associated with the category. Sources handling chemicals with the highest health hazard were assigned to Group I and those with the lowest were assigned to Group V. In addition, the seven non-SOCMI source categories as well as benzene, toluene, and xylene production were included in the first group of source categories. The Committee agreed that this would allow industry, contractors, vendors, and regulatory agencies the time necessary to manage successfully the increased demand on resources and personnel that is anticipated to result from the negotiated rule.

The provisions of the negotiated rule would become applicable to those processes listed in first group 6 months after promulgation of the HON, and to one additional group of production processes each successive quarter. The negotiated rule would, therefore, become applicable to the last group 18 months after promulgation of the negotiated rule. Apart from staggered applicability dates, all other provisions of applicability, including the provisions for a source to request an extension, remain as provided for in the General Provisions for NESHAP.

The negotiated rule also allows an owner or operator to elect to comply with the applicability date of an earlier group. The Committee agreed that some owners or operators at plants having process units from two or more groups might prefer to comply with the provisions of the negotiated rule all at once, or in fewer phases, in order to avoid confusion or misunderstandings about what rules or procedures were applicable to which individual items of equipment.

3. Phases of Valve and Pump Standards

Both the valve and pump standards were structured in three phases to allow time to improve performance and to achieve progress toward lower emission levels. The Committee designed Phase I to allow existing facilities unfamiliar with the existing rules the time necessary to develop and implement a 10,000 ppm LDAR program, as well as to assess the necessary changes in operations, maintenance, and training of employees. Phase I is considered necessary because the majority of existing facilities do not presently implement LDAR programs and it was recognized that establishing programs can be a lengthy process. The Committee agreed Phase I should begin on the applicability date for an existing unit and last for 1 year. A 1-year interval will allow 4 quarters of monitoring which should provide sufficient time to establish a program and to identify and repair valves and pumps with the highest emissions.

Phase II was established to achieve further emission reductions by reducing the leak definition to 500 ppm for valves and 5,000 ppm for pumps. This phase is intended to expand the focus from the higher screening value leaks to lower values and to continue the identification of problem equipment. The Committee agreed that Phase II would begin 1 year after the applicability date for an existing process unit and would continue for 1 and ½ years before Phase III is implemented.

In Phase III for valves, the Committee added a base performance level to the work practice requirements of Phase II. The base performance level was used to determine the monitoring frequency or the applicability of the QIP. The base performance level was added to ensure a more certain emission performance than achieved through the work practice requirement alone and to create an economic incentive to improve performance. For Phase III of the pump standard, the Committee added a base performance level to the work practice requirements and reduced the concentration defined as a leak. The Committee established separate leak definitions for three types of pumps to ensure that each category achieves MACT.

For new process units, the Committee agreed that for both pumps and valves Phase II should be implemented at startup and Phase III should be implemented beginning 1 year after startup. It was expected that new units will be designed using better equipment design or practices and considering the requirements of the standard. The Committee provided a 1-year period in Phase II to allow time needed for adjustments to operations and to correct any problems encountered during startup of the process unit.

4. Valve Standard

As discussed earlier, the Committee developed the valve standard using the LDAR program of the existing rule as a starting point. The standard recommended by the Committee consists of three phases of requirements of increasing stringency and these requirements are a combination of LDAR programs and performance levels. Figure 2 presents the conceptual approach for the valve standard. The rationale for the framework of the standard and the selection of the base performance levels was explained in Section VIII.D. This section explains the rationale for other provisions in the proposed valve standard.

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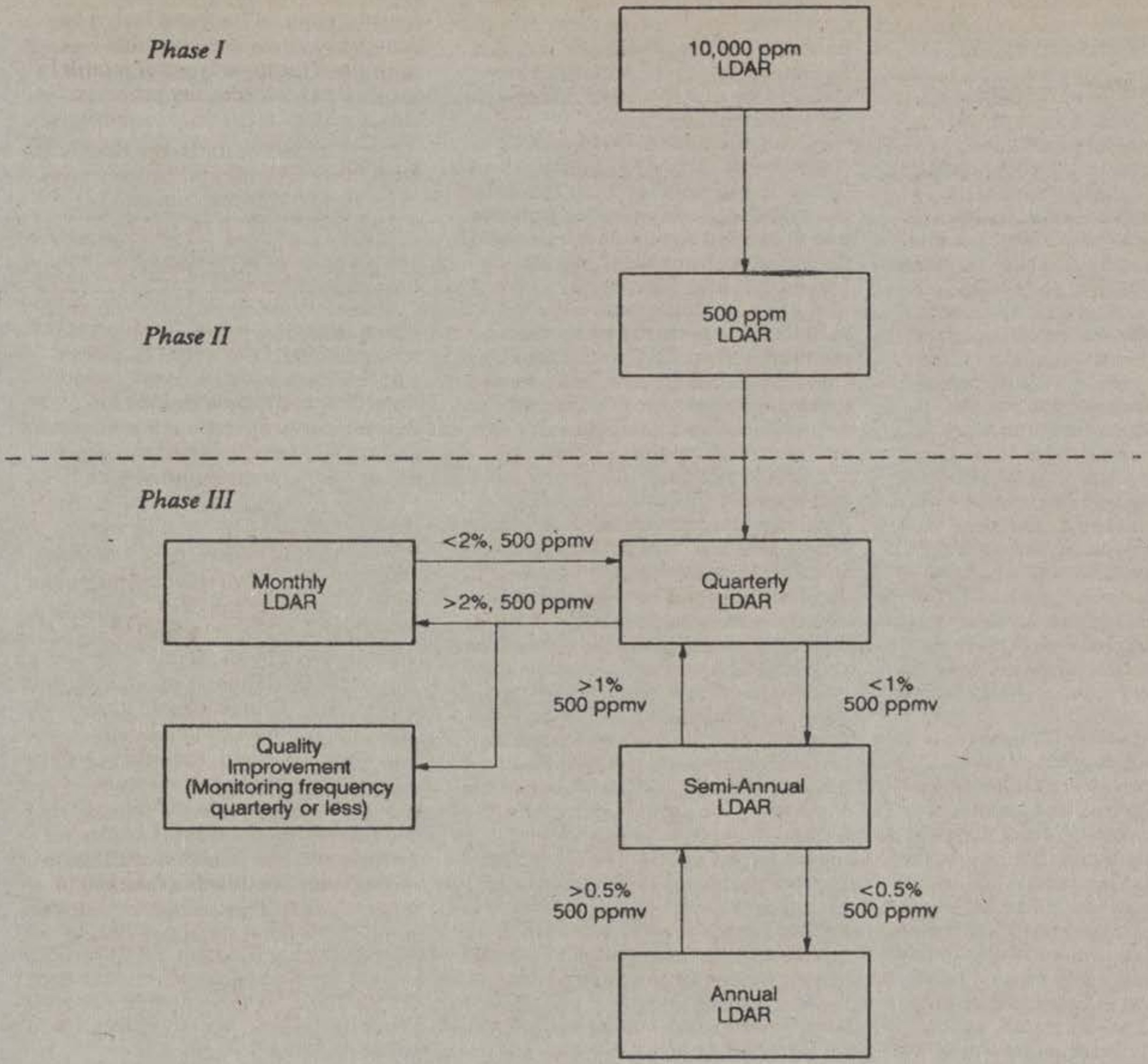

Figure 2. Standard for valves.

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The Committee used LDAR programs as the starting point because LDAR is an effective means of detecting and eliminating emissions from seal failure. For emission sources such as valves, emission standards do not provide appropriate control procedures. As previously discussed, an equipment standard was not selected because equipment, such as sealed bellows valves, cannot be uniformly applied to all SOCMI processes. Moreover, proper use of equipment such as sealed bellows valves, also requires a LDAR program because these valves can fail and can have high emission rates upon failure.

a. *Valve repair intervals.* Repair of leaks soon after detection is a key feature in the proposed rule and is a factor in the effectiveness of LDAR programs. The Committee agreed to retain, in the negotiated standard, the repair intervals (i.e., first attempt at repair in 5 days and repair within 15 days) specified in the existing rules (e.g., 40 CFR part 61, subpart V). The repair intervals in the existing standards are intended to provide effective emission reduction while allowing the time necessary for scheduling of more complex repairs.

As in the existing equipment leak standards, the first attempt at repair is required as soon as practicable after detection of the leak and no later than 5 days after discovery. Most valve repairs, such as tightening the bonnet bolts, can be performed quickly, and 5 days should provide sufficient time to schedule simple field repairs that do not require isolation of the valve from the process. Attempting to repair a leak within 5 days will help identify those valves that cannot be repaired with simple field repair or without shutdown of the process unit. Valves that are not repairable by simple field procedures may require removal from the process for repair. The 15-day repair interval provides sufficient time to identify methods for isolating leaking valves for repair when isolation is necessary and extensive repairs are required. Shorter repair intervals were not selected because they could cause problems in performing effective repairs on valves that must be isolated from the process.

The Committee also recognized that some valves cannot be repaired without shutting down the process and that process shutdown is costly and may result in greater emissions than delaying repair until the next scheduled shutdown. For these reasons, the existing equipment leak regulations allow, under certain conditions, delay of repair of these "nonrepairables" until the next facility shutdown. These rules, in general, require that these valves be repaired during that shutdown. The Committee reviewed the delay of repair provisions in the existing rules and concluded that these provisions are appropriate and should be included in the negotiated standard.

b. *Nonrepairables.* There was considerable discussion by the Committee of whether those valves that cannot be repaired without a process unit shutdown should be considered in determining the required monitoring frequency. One view was, if unrepairable components were included, the potential for increased monitoring frequency would provide a strong incentive for companies to take every possible step to prevent leaks or to repair leaking valves. However, it was also recognized that nonrepairable valves may not always be preventable and counting these could result in higher leak percentages in process units or facilities that have infrequent shutdowns. Moreover, increased monitoring frequency, if triggered by nonrepairable components, is of little direct benefit since the nonrepairable valves will remain unrepaired in spite of more frequent inspection. In light of these considerations, the Committee sought to provide a means to provide motivation for plants to limit the number of nonrepairable valves, while at the same time avoiding imposition of unproductive costs or inadvertently increasing emissions. The agreed upon approach achieves such a balance by excluding nonrepairable valves up to a total of 1 percent of the valves in VHAP service from the calculation of percent leaking valves for sampling periods after the leaking valve was first identified.

c. *Averaging periods for calculation of percent leaking.* In establishing the base performance levels in Phase III, the Committee considered the variability inherent in measurements of equipment leaks and the variability in leak rates over time. There was considerable debate as to whether measurements of equipment leaks are sufficiently precise to warrant performance criteria or how to consider this variability in the framework of the rule. The concept of a 2-period rolling average was introduced as a means of ensuring that random fluctuations, of themselves, do not force a facility into more frequent monitoring. In addition to the benefits of averaging, the rolling average of 2 consecutive monitoring periods provides the opportunity for the plant to take action, such as increased surveillance on a subset of valves, based on higher than normal leak rates in a single period. It also allows the owner or operator the necessary flexibility to implement supplemental quality assurance programs to ensure that performance remains below base levels. The 2-period rolling average is designed to encourage such plant designed quality assurance programs and it does not penalize more frequent inspection and maintenance The Committee selected this approach for semiannual and more frequent monitoring schedules.

The Committee did not choose to apply the 2-period average approach to annual monitoring programs because of the low performance level required for annual monitoring and concerns that effective control programs could be unintentionally penalized due to a single high monitoring result. Specifically, a Committee member described the effect of extreme weather that caused an unplanned shutdown and resulted in an abnormally high number of leaking valves after startup. In this case, the plant would have to revert to more frequent monitoring if only two monitoring periods were considered even though the leak frequency was normally near zero. Such a penalty would be inconsistent with the intent to encourage effective, plant designed quality assurance programs that achieve continuing low leak performance. In light of this, the Committee agreed to base the annual monitoring criterion on the average of 3 out of 4 consecutive monitoring periods. This averaging procedure is intended to provide relief for facilities with histories of good performance from the effects of unusual and infrequent perturbations.

d. *Credits for removing valves.* In developing the negotiated standard, the Committee recognized that minimizing the number of components in a process is one of the most effective means for reducing leaks. Therefore, the Committee gave careful consideration to formats for, or means of, providing an incentive to minimize the number of components and the amount of credit provided.

For new process units, no mechanisms could be identified that would provide such an incentive for all SOCMI processes. New unit designs differ widely from process to process and it was not possible to define a norm or baseline from which component reductions could be determined for new units. In contrast, equipment count baselines can be established for existing process units at the time these units become subject to the standards (for new units at startup) and can be used as the basis for calculating credits for future reductions in the number of valves. The Committee elected to provide these credits in the calculation of percent leaking valves and the associated determination of monitoring frequency. The Committee also decided that use of the valve credit provisions should be at the option of the owner or operator of the process unit because of the burden associated with the recordkeeping needed to document the reduction.

The Committee considered credits for components removed ranging from full credit to one-half credit for each component removed. The full credit option was not selected because some Committee members thought that it could be used to show a specific performance level without actually reducing the number of leaking valves. Based on a desire to provide credit for reducing the number of components, while at the same time ensuring that removal credits do not reduce the incentive for low-leak performance in the remaining components, the Committee selected a 67-percent credit for net reductions in the number of valves; i.e., two out of every three valves removed from a process unit may continue to be counted in the total number of valves when calculating leak frequency.

e. *Unsafe-to-monitor and difficult-to-monitor valves.* The Committee agreed that the "unsafe-to-monitor" and the "difficult-to-monitor" provisions in the existing equipment leak standards are appropriate and should be included in the negotiated standard. Valves that are "unsafe-to-monitor" are defined as valves that could expose personnel to imminent hazards from temperature, pressure, or explosive process conditions. Examples of such locations include valves at the top of or located nearby high pressure reactors. Valves that are unsafe-to-monitor cannot be eliminated from new or existing units. The rule, therefore, would exempt valves in unsafe locations from routine monitoring requirements, but would require monitoring as frequently as practicable during safe-to-monitor periods.

At existing process units, valves may be located where they can be reached only through extraordinary means. The Committee concluded that the criteria for difficult-to-monitor valves are appropriate and that routine monitoring should not be required for valves that require elevating personnel more than 1.8 meters (6 feet) above any permanent support surface. This means that valves that cannot be safely monitored from a step ladder or portable scaffolding could be classified as inaccessible and exempt from routine monitoring. As in the existing rules, the difficult-to-monitor exemption would be available only for existing units. The Committee agreed that routine monitoring of valves that have the potential to leak should be considered in the design of new units.

f. *250 valve exemption from Phase III monthly monitoring.* The Committee agreed to require a quarterly LDAR program in Phases I and II and in Phase III to base the monitoring frequency on the performance level achieved. In Phase III, sources that exceed the base performance level have the option of monthly monitoring or participation in a QIP. For small plants, however, there was concern that either monthly monitoring or QIP would present an unreasonable burden. Because small plants may have limited technical and financial resources and the emissions from small plants with a quarterly LDAR program may be relatively low, the Committee established 250 valves per plant site as the level below which quarterly monitoring would be the most frequent monitoring interval required. The Committee defined a small plant as a site with 250 valves, or fewer, based on an industry estimate of representative number of valves at small facilities and the estimated emissions from such facilities.

5. Pump Standard

As discussed earlier in "Development of Framework and Selection of MACT," the Committee developed the pump standard using the provisions of the existing standards as a starting point. The recommended standard consists of three phases of requirements of increasing stringency and these are a combination of LDAR programs and performance levels. The Committee also retained the existing provisions for DMS systems and for sealless pumps (e.g., canned pumps). Figure 3 presents the conceptual approach for the pump standard. The rationale for the framework and the selection of the base performance levels was explained earlier in this notice. This section explains the rationale for other provisions in the proposed pump standard.

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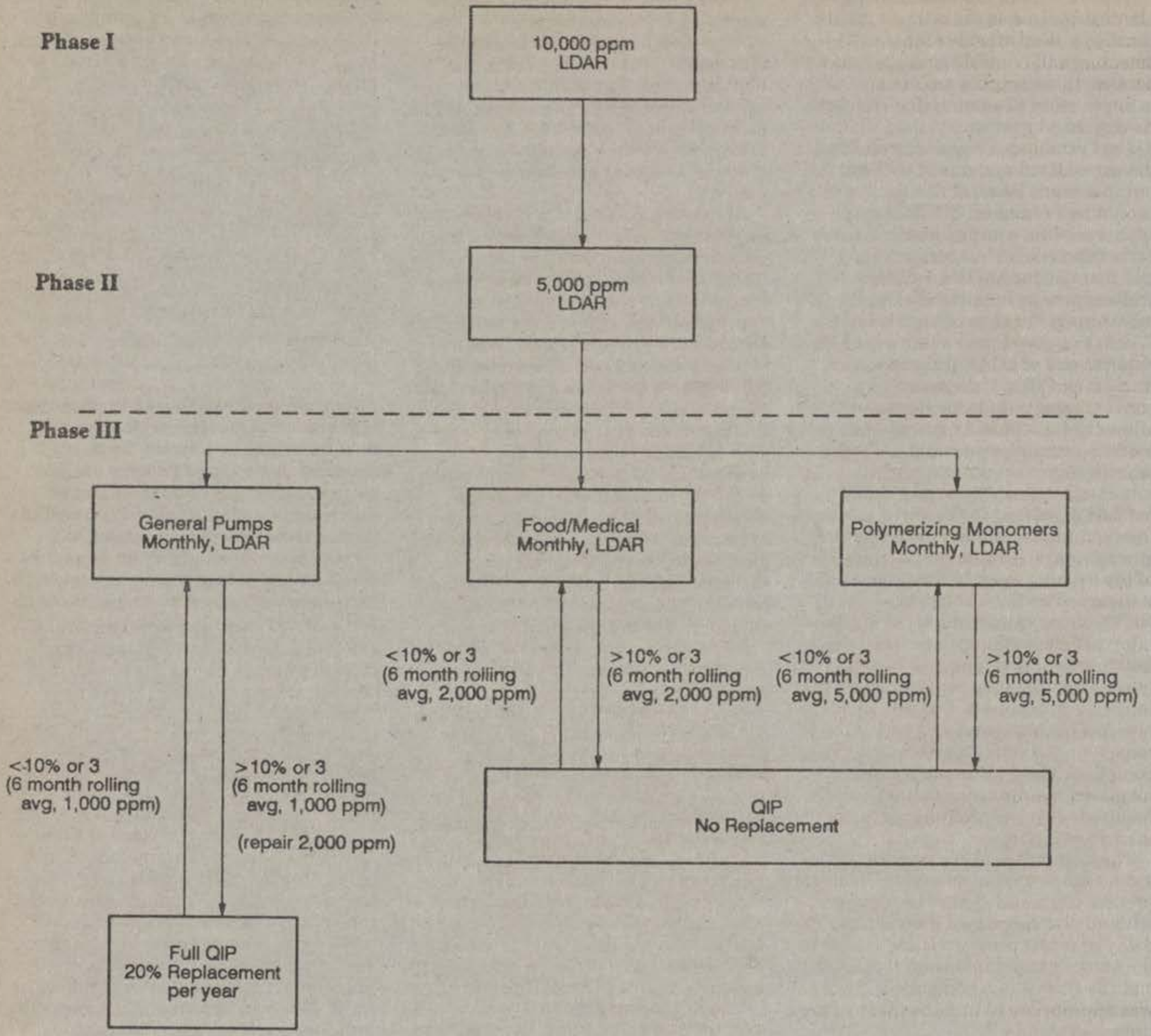

Figure 3. Standard for pumps.

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As with valves, the Committee used LDAR programs as the starting point because it is an effective means of detecting and controlling emissions and because these sources are not amenable to application of an emission standard. As discussed previously, the Committee did not establish a standard requiring the use of DMS systems or sealless pump designs because this equipment cannot be used in all SOCMI processes. Moreover, this equipment can fail and leaks can occur. Thus, proper operation and maintenance of DMS systems and sealless pumps requires some monitoring. For these reasons, the Committee developed a standard that requires use of LDAR programs (including QIP's, if necessary) for conventional pumps, or alternatively allows the use of DMS systems or sealless pump designs with periodic monitoring.

a. *Pump repair intervals.* For the reasons discussed in the valve standard, the Committee retained the 5-day first attempt and the 15-day repair intervals of the existing rules in the pump standard. The Committee agreed that, with a minor clarification, these repair intervals were appropriate. The Committee added language to clarify the types of simple field repair that are intended to represent first attempt at repair. This provision was added to reduce uncertainty regarding compliance and to consider the increased maintenance that will be required with leak definitions lower than 10,000 ppm.

The Committee also recognized that some pumps are not spared in chemical process units and cannot be repaired without shutting down the process. The delay of repair provisions for pumps in the existing standards were reviewed and the Committee concluded that it was appropriate to include these in the proposed standard.

b. *Averaging period for calculation of percent leaking.* During development of the Phase III base performance level, concerns were expressed by Committee members regarding the inherent variability of percent leaking calculations given the small number of pumps typically present in process units and the inherent variability of the leak measurements. While there were no data available to quantify the month-to-month variability of pump leak frequencies, it was expected from general experience that leak frequencies would be highly variable. It was also judged that leak frequencies based on short time periods of data would be poor predictors of the type of performance that the QIP was intended to remedy. The Committee, therefore, concluded that pump leak frequencies should be averaged over a period of several months to provide an indication of trends in performance. A rolling 6-month average was selected by the Committee as an appropriate measure for indicating upward trends and the need to take additional measures to reduce pump seal failures.

c. *Calculation of percent leaking pumps.* The calculation procedure specified in the pump standard is designed to address additional concerns about the variability of pump leak frequencies and to encourage the use of low leak design pumps and pump seals. Because of the small number of pumps in typical process units, the Committee provided the owner or operator the option of calculating percent leaking on a process unit or plant site basis. This option was provided to allow the necessary flexibility to consider further problems associated with small population statistics and site specific concerns. The Committee also decided to require the owner or operator to designate the basis for calculating percent leaking pumps in the first monitoring period and to use that basis for all subsequent calculations. This was required: (1) To preclude sources from using the most favorable basis for the period and circumventing the intent of the pump standard, and (2) to simplify enforcement.

The Committee also agreed that pumps equipped with DMS systems and sealless pumps (e.g., canned or magnetic pumps) could be included in the calculation of percent leaking pumps. For the purpose of this calculation, these pumps are assumed not to leak. The calculation procedure, thus, gives credit for use of inherently low leak designs and is intended to provide an incentive to install these designs.

The negotiated standard would exclude pumps that leak shortly after startup of a process unit or startup of an individual pump after maintenance or repair activities on that pump from the calculation of percent leaking for that monitoring period. This exclusion was added because industry members of the Committee reported that preinstallation testing does not necessarily ensure that a pump will not leak when put into service. The industry members also thought that these leaks are not indicative of a long term problem. The Committee concluded that such pumps should be subject to the repair requirement, but that this problem is not indicative of the type of poor performance that QIP is intended to remedy.

d. *Requirements for low leak design pumps.* The Committee retained, with slight modifications, the provisions in the existing standards for pumps with DMS systems and for sealless pumps (e.g., 40 CFR 61.242–2 (d) and (e)). For pumps with DMS systems, the Committee agreed that it was only necessary to prohibit use of light liquid VHAP as barrier fluids. The Committee allowed the use of heavy liquid VHAP as barrier fluids because the operation and monitoring requirements for DMS systems were considered sufficient to minimize any emissions from leaks from the DMS system. The Committee also reevaluated the requirement for annual demonstration of no detectable leaks from sealless pumps in the existing standards (e.g., 40 CFR 61.242–2(e)). The Committee considered the causes of failures of these designs and concluded that weekly visual inspection would achieve equivalent performance and assure that these pumps have no emissions. Consequently, under the negotiated pump standard these sealless design pumps would be subject to a weekly visual inspection work practice standard and would not be subject to an annual performance test requirement to demonstrate no emissions.

6. Quality Improvement Program for Valves and Pumps

As discussed earlier in the "Development of Framework and Selection of MACT" section of this notice, the Committee recognized that there is uncertainty in the achievability of the proposed performance levels by all SOCMI processes, given that these levels are based on information from a small number of chemicals. Consequently, the Committee developed provisions that would require process units not achieving the base performance levels for valves to implement more frequent monitoring or a QIP designed to ultimately achieve the performance levels and units not achieving the base performance levels for pumps to implement a QIP. A process unit not able to achieve the performance levels is not out of compliance if it undertakes these additional measures. The provisions for quality improvement were included in the framework to allow those owners or operators of process units that do use all elements of MACT but do not achieve the base performance levels the flexibility to develop process unit-specific, cost-effective methods for improving emission performance. The QIP also provides an innovative mechanism for focusing efforts on reducing emissions while avoiding lengthy enforcement actions.

Only a few process units are expected to use the valve QIP. It is expected that in the majority of cases, a systematic program of monitoring individual components and repair of those that leak will achieve the performance levels of the standards. It is recognized, however, that there may be situations where the performance levels cannot be achieved due to specific process and operating conditions. The valve and pump QIP's were designed to provide a mechanism for improving performance in such situations. These QIP's prescribe programs that will require a commitment to quality improvement and will involve many aspects of plant operations (e.g., engineering and maintenance). This section presents the basis for the specific provisions in the valve and pump QIP.

a. *Valves.* The Committee developed two alternative QIP's for valves and agreed to restrict the availability of both of these alternatives. The QIP may be a program that either demonstrates progress in reducing the percent leaking valves or implements a technology review and improvement program. The decision to use either of these alternative QIP's must be made during the first year of Phase III for both new and existing units. Under either alternative QIP, after the process unit has achieved less than 2 percent leaking valves, the owner or operator may elect to continue the QIP. If the owner or operator discontinues the QIP, however, the QIP may not be used in the future if the unit again exceeds 2 percent leaking valves. In such cases, the owner or operator must implement monthly monitoring until the unit has less than 2 percent leaking valves.

The availability of this QIP was restricted due to concerns of some Committee members that the QIP might be used to delay improving performance. These Committee members were concerned that, unrestricted, the QIP could provide for extended study and would never result in any improvements in performance. The Committee also agreed to allow facilities to remain indefinitely in the QIP after achieving less than 2 percent leaking valves. This option was provided since it would assure continued good performance and was consistent with the objectives of the QIP.

Demonstration of progress quality improvement program. This alternative QIP would allow an owner or operator of a source to design and implement a site specific program to achieve steady progress in lowering the percent leaking valves. Any combination of measures such as increased maintenance frequency or replacement of components may be used, provided it achieves the required reductions in percent leaking valves.

Under this QIP, the owner or operator would be required to continue quarterly monitoring and to demonstrate an average 10-percent reduction in the percent leaking valves each quarter, based on a rolling average of 2 quarters of monitoring data. If an owner or operator fails for 2 consecutive averaging periods to demonstrate at least an overall average reduction of 10 percent per quarter, the owner or operator must either implement a technology review and improvement QIP or monthly monitoring. If this QIP is continued after a process unit has less than 2 percent leaking valves, the owner or operator must continue quarterly monitoring, but does not have to continue to demonstrate the 10-percent reduction per quarter.

The Committee developed this QIP to provide an ad hoc performance limit for those owners or operators interested in a less formal improvement program than that specified in the technology review and improvement QIP. It was envisioned that this alternative QIP would be useful primarily for those process units with leak frequencies only slightly greater than 2 percent. The Committee judged that an average reduction in percent leaking valves of 10 percent per quarter, calculated as a rolling average of 2 quarters of monitoring data, would provide a reasonable basis for determining whether progress was being made in approaching the 2 percent performance level. Moreover, it was expected that this rate of reduction would achieve the performance levels of the base monitoring program at a time comparable to that expected under the technology review and improvement QIP. To ensure that continual progress is achieved, the Committee required that units failing to show progress, as measured by the reduction in percent leaking valves, either implement monthly monitoring or a technology review and improvement QIP. With either of these more structured alternatives, it was expected that adherence to the program would reduce emissions.

Technology review and improvement quality improvement program. This QIP was designed to provide a generic process for identifying appropriate solutions to systematic problems. The Committee developed these provisions considering the fundamentals of problem solving and quality improvement principles. The QIP is structured as three classes of requirements: data collection and analysis, performance trials, and quality assurance and improvement.

The principal basis for the provisions in the technology review and improvement QIP was general knowledge of factors affecting equipment leaks and recent experience in leak control at some chemical production units. Key principles used in developing this QIP are: (1) The details of programs (e.g., specific designs or equipment) are best determined by the source for the conditions in the process unit and (2) good performance is the cumulative result of analysis and attention to quality improvement over a period of several years. Specific information that the Committee considered included the reported recent experience of one EO producer in reducing and eliminating leaks from two process units. The experience of CMA's phosgene panel and the process that was used over the past 10 or more years to achieve their present performance were also considered. How the Committee weighed the various factors in arriving at the details of this QIP is described in the following paragraphs.

The Committee included a requirement for extensive data collection because these data are essential to understanding the causes of problems and to development of a corrective program. The QIP would require that specific information be recorded on each valve's design, materials of construction, packing, type, service conditions, and screening values. Engineering evaluations would also be required to determine the causes of failure of all valves removed from the process unit due to leaks. These records are required to ensure that the data necessary for evaluation of causes of leaks is available.

The technology review and improvement QIP would require analysis of the data to determine if there are specific problem services, operating conditions, valve types, designs, and materials of construction. A second, and equally important, objective of the analysis would be to identify valve designs and operating practices that will operate with less than 2 percent leaking valves under conditions comparable to those in the process problem areas. Such valve designs or technologies are referred to in this QIP as superior performing valve technologies. Because process conditions and causes of valve leakage do vary among process units and the combinations of equipment and procedures that are "superior" may differ, superior performing valve technology is not specified exclusively in terms of specific valve types or designs. Rather, superior performance is defined as including any combination of valve type and process, operating practices, and maintenance practices that achieves the base performance level of the standard. This flexibility was provided because it was recognized that best performing equipment has to be determined in context of the application. In some cases, superior performance may be achievable by use of a different packing material in the valve; in other cases, use of a different valve design or design changes to the process configuration may be required. Such specific decisions are best determined by the source owner or operator.

These superior performing valve technologies may be identified through analysis of the process unit (or plant) data, or through review of available literature and the experience of other facilities. Both the process unit (or plant) data and outside experience must be considered in identification of candidate superior performing valve technologies for performance trials. This was specified to ensure that a comprehensive assessment was conducted. For similar reasons, the Committee agreed that the analysis and identification of better performing equipment may be conducted through an inter- or intra-company program and may encompass a single process unit, a company, or group of process units.

The Committee decided that the first data analysis must be completed no later than 18 months after the start of Phase III. This schedule was established to balance both the time necessary for understanding the problem(s) and the need to achieve a reasonable rate of progress. The data analysis must be reevaluated each year the process unit is in the QIP and has 2 or more percent leaking valves. This was included to ensure continued improvement.

Performance trials would be required where the data analysis for the process unit does not identify any superior performing valve designs or technologies that can be applied to the process unit. Performance trials of candidate equipment will ensure that possible solutions are evaluated and that application of new equipment or operating procedures makes good engineering sense. These trials must be conducted as of an experimental program that identifies all the designs and technologies to be evaluated, the stages of the evaluation, the range of planned test conditions, estimated duration of each stage, and documentation of the conclusions for each test. The purpose of the performance trials provision is to determine if candidate equipment or operation and maintenance procedures can be used in the conditions in the process unit. Because these performance trials are primarily intended to be tests of feasibility of application to the process conditions, the number of valves in the trial program was set at a realistic number for experimental evaluation. The performance trials are not intended to provide an estimate of the leak frequency. The QIP would require performance trials for 1 percent of the valves up to a maximum of 20 valves in a single process unit or 50 valves in a plant site study. The first performance trials shall be completed by 24 months after the start of Phase III, or 6 months after conclusion of the first data analysis. At that time, the owner or operator shall have identified valve designs or technologies that combined with appropriate process, operation, and maintenance practices operate with low emissions. The owner or operator shall continue performance trials until a superior performing technology is identified, the process unit has less than 2 percent leaking valves, or there are no additional technically feasible candidate technologies remaining. As additional information and experience are gained in the QIP, the list of identified low emission performing equipment shall be updated.

The owner or operator would be required to prepare a quality assurance plan that is based on the results of the data analysis, engineering evaluations of valves, and the performance trials. The plan must include procedures that will ensure that each replacement valve is a quality-assured valve. These valves must be valve technologies that have been identified as superior emission performance technology for that category of valves, unless no superior performers could be identified. Where this occurs, the valves must be one of the lowest emission technologies identified for the specific application. The quality assurance plan must specify minimum design standards for each category of valves established by the owner or operator, include a written procedure for bench testing of valves for leaks, provide an audit procedure for quality control of purchased equipment, and include procedures to ensure quality of any rebuilt equipment. The quality assurance plan for replacement valves must be implemented as long as the process unit remains in the QIP. These provisions were included to guarantee there would be continued improvement in the emission performance of the process unit.

This quality assurance plan is to be established by the start of the third year of Phase III for most plant sites and by the start of the fourth year of Phase III for plant sites that meet the exemption for small facilities.

The Committee exempted plant sites that have fewer than 400 valves and that are owned by a company with fewer than 100 employees from the requirement to conduct performance trials. This exemption from performance trials was provided to consider the limited technical resources available for conducting research at smaller companies and to minimize any adverse cost impacts of the standard on small companies. The Committee selected the exemption criteria based on typical valve counts in a small process unit and an industry estimate of the typical number of employees for a small company. These facilities were also allowed an additional year to develop a quality assurance plan and to begin using quality assured valves that will operate with low emissions in the process unit. The Committee provided this additional time to allow these smaller facilities the time needed to obtain the necessary information from vendors, literature, and other sources.

The Committee considered, but rejected, provisions that would have required mandatory replacement of some proportion of the valves in the process unit each year. Such a provision was not established for valves for several reasons. Leaking valves can only be repaired on-line a limited number of times before they can no longer be adjusted to achieve lower emissions and must be replaced. Typically, on an industry wide basis, 7 to 10 percent of the valves are reportedly replaced each year for reasons other than leaking. If valves that are replaced (for any reason) are replaced with quality assured valves appropriate to the service conditions, an improvement in emission performance can be achieved at nominal additional cost. The Committee judged that the normal replacement of 7 to 10 percent of the valves each year was a reasonable rate of improvement considering that a mandatory replacement program would cause very high expenditures for negligible benefit.

b. *Pumps.* The Committee developed a technology review and improvement QIP as a means for process units (or plants) to ultimately achieve the performance level of the standard. Only this type of QIP was employed because the Committee believed that the only practical solution for pumps was an engineering analysis to determine the causes of systematic problems (e.g., design, application, etc.). Like the technology review and improvement QIP for valves, this QIP was designed to provide a generic approach to evaluate the problem, identify solutions, and improve equipment and operations. The Committee also recognized that sufficient time must be provided to identify both the causes of leaks and cost-effective solutions. Thus, the pump QIP specifies similar requirements on the same schedule as the valve QIP. The pump QIP differs from the valve QIP in several respects due to differences between the two standards and between the equipment. This section presents the rationale for the differences between the provisions for the two QIP and the additional factors that were considered in developing the pump QIP.

Unlike the valve provisions, the pump QIP would not be an option for selection by the owner or operator and there would be no restrictions on when a process unit (or plant) enters a QIP. An owner or operator must comply with the requirements of the QIP whenever the greater of either 10 percent of the pumps or three pumps in a process unit (or at a plant) leak. A process unit must remain in the QIP as long as the percent leaking pumps is greater than the base performance level. Theoretically, a process unit (or plant) could be subject to the QIP provisions more than one time. In cases where a process unit (or plant) again becomes subject to the QIP, the QIP must be resumed starting at the performance trials stage. Resumption at the performance trials was specified, rather than the stage at which the unit exited the QIP, to ensure that the QIP results in a reasonable rate of progress toward the base performance level. Furthermore, some Committee members thought adequate data and analysis would be available from the earlier QIP. It was also assumed that owners and operators of process units (or plants) with pump leak frequencies near the base performance level would be prepared to conduct performance trials should the leak frequency increase. Several Committee members also thought that resumption at performance trials was appropriate for process units (or plants) that reenter the pump QIP after completion of performance trials. These additional trials were judged necessary since technology (e.g., pump seal materials, design, etc.) may have changed since the previous evaluations and additional features may need investigation.

As with the technology review and improvement QIP for valves, the Committee required that a comprehensive data base be developed on pump type, design, materials of construction, service characteristics, and screening values. The engineering evaluation requirement differs in that inspections are required for pumps removed from the process due to leaks and for pump seal designs associated with high failure rates. These inspections are required to ensure that evaluations are of equipment with apparently fundamental design or application problems and are not of equipment at the end of the design life. Both pumps and pump seals were included to ensure that all possible sources of leakage (e.g., split casings on large pumps) are included.

As in the valve QIP, the data are analyzed to identify problem areas and services as well as to identify superior performing pump technologies. Again, these technologies are not considered to solely include particular pump or seal designs. Superior emission performance technology may include material or design changes to existing pumps, pump seals, seal support systems, use of multiple mechanical seals, or replacement by a canned pump or a magnetically driven pump. Any combination of equipment and operating practices that achieves the specified level of performance is considered to be superior emission performance technology.

The pump performance trial provision sets a lower limit than the valve QIP does on the number of performance trials; for pumps the number of tests is 1 percent of the pumps up to a maximum of 2 for a single process unit and 5 for a plant. The smaller number of trials is specified because pump populations are much smaller than valve populations. Furthermore, with pumps there will be far fewer changes in operation, maintenance, and design parameters that can be evaluated. Again, because the purpose of the trials is to test the feasibility of using the technology and not to predict the leak frequency, a large number of trials is not necessary.

The quality assurance plan for pumps would have the same basic objectives and requirements as does the valve program. The minor differences between the pump and valve requirements arise because bench testing of pumps is not a useful predictor of on-line performance and was not required.

For pumps in general chemical service, the Committee decided to require replacement of 20 percent per year of the pumps or pump seals with equipment, operations, and maintenance practices identified as superior emission performance technology. As discussed earlier, this superior emission performance technology is not considered to be exclusively represented by specific designs such as canned pumps or specific types of pump seals such as DMS. Rather, it is envisioned as consisting of the combination of pump and seal design combined with appropriate process, operation, and maintenance practices that will achieve the performance level of the proposed standard. The mandatory replacement provision was included for general chemical service pumps to ensure that process units (or plants) (ultimately) achieve demonstrated performance levels. The Committee intended for this provision to serve as an incentive to improve performance.

Mandatory replacement provisions were not applied to pumps in food/medical service or to pumps handling polymerizing monomers since in both cases no demonstrated performance level or technology could be identified. No data were available to the Committee that showed the performance level that could be achieved by these services. As explained earlier in discussion of the proposed pump standard, the Committee also concluded that DMS may not be appropriate for use on pumps in these services. Consequently, the Committee agreed that replacement equipment must be quality assured and be one of the lowest emission performance technologies identified.

7. Standard for Connectors in Gas/Vapor and Light Liquid Service

As discussed earlier, the Committee developed a standard for connectors that consists of a LDAR program in which the monitoring frequency is based on the percent leaking connectors and a leak is defined as an instrument reading of 500 ppm or higher. This standard would not be phased in and would apply as soon as the rule is effective for a process unit. The Committee judged that phase in of the standard was unnecessary since once connectors are leak tight they should remain leak tight. Figure 4 presents the conceptual approach to the connector standard. In addition to the basic LDAR program, the Committee also established several provisions to address situations unique to connectors. This section explains the rationale for these additional provisions.

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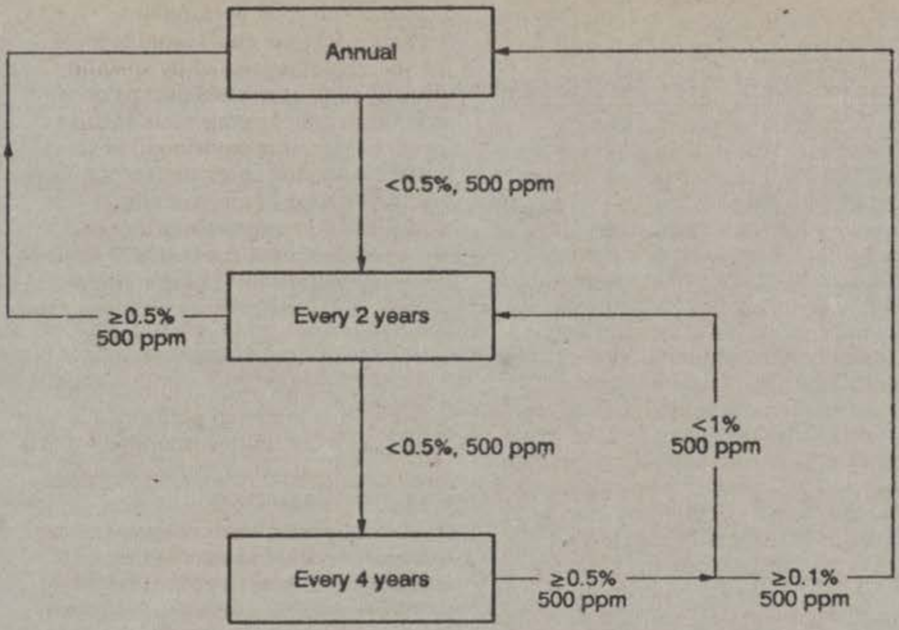

Figure 4. Standard for connectors.

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As with other equipment, the Committee judged that it is not technically or economically feasible to establish an emission standard for connectors. A work practice standard, consisting of a LDAR program and a base performance level, was developed because it provided a practical means of detecting and controlling emissions.

a. *Connector repair intervals.* For the reasons discussed in the valve standard, the Committee applied the 5-day first attempt at repair and the 15-day repair interval of the existing rules to connectors. These repair intervals were considered appropriate for instances where leaks can be reduced by tightening bolts or where the connector can be isolated from the process. The Committee also recognized that most connectors cannot be isolated from the process and cannot be repaired without shutting down the process. In such cases, the Committee agreed that delay of repair until the next process unit shutdown is appropriate and the delay of repair provisions in the existing rules should be allowed for connectors.

In some situations, repair of a leaking connector would expose personnel to imminent danger. Therefore, a special provision was added to the connector standard that allows the owner or operator to designate unsafe-to-repair connectors and to delay repair of these connectors until the next process unit shutdown. Connectors which are unsafe-to-repair are those that would expose repair personnel to imminent hazards from temperature, pressure, or explosive process conditions. An example of such a hazard would be connectors on high pressure lines where tightening a bolt could cause failure and result in a major or catastrophic release.

b. *Nonrepairable connectors.* The Committee recognized that nonrepairable connectors may not be completely preventable and that increased monitoring frequency, if triggered by nonrepairable components, would be of little benefit. As with valves, the Committee sought to strike a balance between providing an incentive to limit the number of nonrepairable connectors and avoiding imposition of unproductive costs. The agreed approach allows excluding up to 2 percent of the connectors from the calculation of percent leaking if disturbed connectors are monitored for leaks within 3 months. The Committee allowed more connectors than valves to be excluded from the calculation (i.e., 2 versus 1 percent) because it is more likely that connectors cannot be removed from the process and repair would have to be delayed until the next process unit shutdown.

The Committee also allowed owners or operators the option of foregoing followup monitoring of disturbed connectors in exchange for not excluding nonrepairable connectors in the calculation of percent leaking connectors. This option provides flexibility and encourages owners or operators to develop their own program to ensure low leak frequencies for connectors. Exercising this option would mean that a process unit would have to have less than 0.5 percent leaking connectors to monitor less frequently than annually. The Committee also agreed to allow an owner or operator to switch from one option to the other provided the new option begins with annual monitoring. This optional provision was developed because of some Committee members' concerns that the administrative burdens would exceed any benefits provided.

c. *Calculation of percent leaking.* For connectors, the Committee decided that the percent leaking should be calculated for each monitoring period and should not be based on rolling averages of several monitoring periods. This decision was based on the judgment that properly designed, constructed, and installed connectors should operate for an extended time before failure and exhibit a low frequency of random failures. The results of a single monitoring period were, therefore, expected to provide a reliable estimate of the actual leak frequency.

d. *Credits for removing connectors.* For the reasons discussed previously for valves, the Committee elected to provide partial credit in the calculation of percent leaking connectors for connectors permanently removed from the process unit. If a connector is removed from a process unit by welding the connector or by welding the pipe together, the integrity of the weld must be verified to be eligible for removed connector credits. This was required to ensure that credits are only provided for successful welds around the entire circumference. Like the valve credit, this credit is included to provide an incentive for owners of facilities to minimize the number of connectors.

e. *Unsafe-to-monitor and inaccessible connectors.* The Committee added provisions to the connector standard to consider situations where connectors may be unsafe to monitor or inaccessible. Like valves, unsafe-to-monitor connectors are connectors that could expose personnel to imminent hazards from temperature, pressure, or explosive conditions. These connectors must be monitored as frequently as practicable during safe-to-monitor periods.

The Committee also exempted inaccessible connectors and glass or glass-lined connectors from the requirement for routine monitoring. Inaccessible connectors are defined as buried; insulated in a manner that prevents access by the monitor probe; obstructed by equipment or piping; or not accessible from a 7.6-meter (25-foot) portable scaffold on the ground and greater than 1.8 meters (6 feet) above a support surface. These different categories of inaccessible connectors were identified as presenting situations where monitoring would be extremely difficult, dangerous, or physically impossible. Specifically, buried and obstructed connectors were exempted because it is not possible to monitor these connectors. Insulated connectors were exempted because removal of the insulation from cold systems could cause leaks due to thermal stress and would be very costly. Removal of insulation from hot systems would create a safety hazard in addition to being costly. Connectors that cannot be reached from a 7.6-meter (25-foot) portable scaffold or from a step ladder would also present a safety hazard to monitoring personnel. Glass and glass-lined connectors were exempted because the potential for on-line repair by tightening bolts is limited due to the possibility of breakage and attendant accidental releases. For both inaccessible and glass or glass-lined connectors, however, if leaks are detected by visual, audible, or other means, the leaking connector shall be repaired no later than 15 days after the leak is detected.

f. *Provisions for screwed connectors.* The connector standard would include a provision that allows an owner or operator the option of exempting existing screwed connectors of 2 inches or smaller nominal diameter from routine monitoring provided these connectors are monitored once after the standard takes effect and after the seal is broken or disturbed. Any leaking connectors shall be repaired. Some Committee members felt that it would be very costly to monitor large numbers of small connectors in some process units and the emission reduction achieved would be small.

The Committee agreed to include this provision for several reasons. The general opinion of engineers on the Committee was that screwed connectors once properly threaded and leak tight should stay leak tight, since there are no moving parts and the seal does not rely on gaskets or other materials that can deteriorate. Thus, an initial check and one-time followup monitoring after opening the connector were judged to provide sufficient assurance that the connectors are leak tight. However, because the available data were insufficient to demonstrate this, new screwed connectors of any size and existing screwed connectors greater than 2 inches nominal diameter were not allowed this option and are treated the same as any other connector. The standard would also require that data on the leak frequency of screwed connectors be reported. The EPA intends to review this information and, based on the findings, will consider whether to amend the standard to require routine monitoring for existing screwed connectors of 2 inches, or smaller, nominal diameter, or to apply the initial check and one-time follow-up to all connectors.

8. Provisions for Other Equipment

a. *Compressors.* As with other equipment, an emission standard was not developed for compressors because application of available measurement methods is not technically or economically feasible. The requirements in the existing standards were judged to be MACT and were used as the basis for the negotiated standard for compressors. The standard requires the use of mechanical seals equipped with a barrier fluid system and controlled degassing vents or enclosure of the compressor seal area and venting of emissions through a closed vent system to a control device. These systems can provide control efficiencies approaching 100 percent.

b. *Pressure relief devices in gas/vapor service.* The negotiated standard, like the existing standards, is based on the use of rupture disk systems or control devices, which are considered to effectively eliminate emissions, when properly installed, maintained, and operated. The existing equipment leak standards establish a "no detectable emission limit" of 500 ppm for control techniques that eliminate emissions. The Committee considered redefining the emission limit for pressure relief devices, but agreed that there were insufficient data to redefine the limit below 500 ppm. The general opinion was that a 500 ppm standard would ensure essentially zero emissions and would ensure that an effective control system would not be found to be in violation due to residual VHAP in the vent exit. Therefore, the negotiated rule would require that pressure relief devices be operated with an instrument reading of less than 500 ppm above background, except during pressure relief.

The 500 ppm above background limit would not apply to discharges through the relief device during pressure relief, because the function of relief devices is to discharge process fluid, thereby reducing dangerously high pressures within the equipment. Relief devices must operate with an instrument reading of less than 500 ppm above background within 5 days after such a discharge. A definition of "set pressure" was added to the standard to clarify that set pressure is where a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

As an alternative to rupture disks and other techniques that will achieve less than 500 ppm above background, owners or operators may vent pressure relief devices to closed vent systems connected to a control device.

c. *Sampling connection systems.* The Committee agreed the closed-purge sampling, closed-loop sampling, and closed vent vacuum systems in the existing rules represent MACT for sampling connection systems. Closed-purge sampling systems eliminate emissions due to purging by either returning the purge material directly to the process or by collecting the purge in a collection system which is not open to the atmosphere for recycle or disposal. Closed-loop sampling systems also eliminate emissions due to purging by returning process fluid to the process through an enclosed system that is not directly vented to the atmosphere. Closed vent vacuum systems capture and transport the purged process fluid to a control device. An emission limit was not specified because measuring mass emissions from sampling systems would require enclosing each system (i.e., bagging), a measurement method which is time-consuming, costly, and impractical. A concentration limit is also not feasible because although the VOC and VHAP control efficiency on a closed-purge or closed-loop sampling system is approximately 100 percent, some VOC and VHAP could be emitted during its transfer to a closed collection device or during its ultimate disposal.

Because emission standards cannot feasibly be prescribed for sampling connection systems, several alternative formats were considered and equipment standards found to be most appropriate. The proposed standards for sampling connection systems in the negotiated rule would require the use of closed-purge or closed-loop sampling equipment or a closed vent system. *In situ* sampling systems would be exempted from these regulations.

d. *Open-ended valves or lines.* Emissions from open-ended valves or lines can be eliminated, except when the line is used for draining, venting, or sampling operations, by enclosing the open end by a cap, plug, or a second valve. The control efficiency associated with these techniques is approximately 100 percent and is considered to be MACT. As with other items of equipment, establishing an emission limit is neither effective nor technologically feasible. Therefore, the Committee based the standard on the combination of equipment and operational requirements in the existing rules.

The negotiated rule would require the use of a cap, plug, blind flange, or a second valve or other equipment to close the open-ended valve or line. To ensure the proper operation of the equipment, open-ended lines are also covered by operational standards. If a second valve is used to close the open end, the proposed standards would require the upstream valve to be closed first. After the upstream valve is completely closed, the downstream valve would be closed. This operational requirement is necessary in order to prevent trapping process fluid between the two valves, which could result in a situation equivalent to the uncontrolled open-ended line.

e. *Product accumulator vessels.* The technique for controlling product accumulator vessels is to connect the vessel to a closed vent system and control device. Anything in compliance with the requirements for closed vent systems and control devices is acceptable.

f. *Control devices.* Control devices would be used to dispose of VHAP captured in closed vent systems from barrier fluid degassing systems and enclosed pump and compressor seal areas. In all cases, these control devices would receive streams with low and intermittent flow rates. These control devices would in some cases be designed to dispose of organic streams from other sources in the plant, so that the VHAP streams may contribute a very small percentage of the total loading on the control device. Because it would be technologically and economically impractical to measure very low-flow streams and differentiate these streams from others, an emission standard was not proposed for these control devices.

Design requirements for control devices were considered to ensure that appropriate emission reductions would be achieved from control devices used in conjunction with closed vent systems. Enclosed combustion sources, flares, and vapor recovery systems were considered as control devices for the closed vent system. The proposed standard requires that these control devices reduce organic emissions by 95 percent or meet minimum design requirements. The minimum design requirements specified for enclosed combustion devices is to provide a minimum residence time of 0.5 seconds at a minimum temperature of 760 °C (1400 °F). Flares used as control devices to comply with the negotiated standard shall comply with the requirements of 40 CFR 60.18.

Vapor recovery systems would also be allowed as control devices for VHAP from closed vent systems. A control efficiency of at least 95 percent was chosen as the design requirement because it is the highest control efficiency that has been demonstrated consistently for vapor recovery systems such as carbon adsorption or condensation units.

g. *Agitators.* Agitators were not evaluated during regulatory development of the existing regulations and are not presently regulated by any standard. Therefore, very limited information is available on this equipment. The Committee determined that agitators should be included in the negotiated standard for several reasons. First, a limited amount of screening data indicate that agitators may be a significant source of emissions. Second, agitators are technologically similar to pumps, and, like pumps, emissions can be controlled using seal technology. However, agitators have longer and larger diameter shafts than pumps and produce greater tangential shaft loadings. The performance of pump seal systems, therefore, cannot be used to estimate agitator seal performance. Considering this and the potential for large leaks, the Committee agreed to require a monthly LDAR program only and to define a leak as a concentration of 10,000 ppm or higher. This program will require replacement of agitator seals with significant leaks and will encourage development of effective bearing and seal systems.

h. *Instrumentation systems.* The Committee created this equipment category to address industry members concerns with application of LDAR programs to equipment used in monitoring process operations. Small diameter tubing and other components are used to convey process samples to analyzers to determine chemical composition and to instruments such as pressure and flow transducers. Instrumentation systems typically contain valves 0.5 inch in nominal diameter or less and connectors 0.75 inch nominal diameter or less and are located in a confined area such that monitoring of individual components is generally infeasible. Because these systems provide critical process operating information, they are subject to frequent surveillance and maintenance to assure the reliability of measurements. Leaking equipment in these systems would be readily detected by changes in temperature, pressure, flow rates, or by observation. Additionally, it is common practice in the industry after maintenance or repair to verify the integrity of these systems by soap bubble testing or pressure checks. Therefore, a routine LDAR program would be redundant and would provide no benefit. The Committee concluded for these reasons that it was appropriate to develop alternative provisions for these systems.

The Committee judged that it was appropriate to require repair of leaking instrumentation systems in a timely manner and agreed to treat these systems in a manner similar to equipment in heavy liquid service. In addition, the Committee agreed that monitoring of individual components in instrumentation systems by Method 21 is not necessary if the leak is repaired and the repair is verified. The verification may be by soap testing, a pressure check, or any other visible, audible, olfactory, or other means.

i. *Miscellaneous.* As in the existing equipment leak standards, pumps, valves, connectors, and agitators in heavy liquid service (HAP fluids with vapor pressures less than 0.3 kPa at 20 °C), and pressure relief devices in light liquid or heavy liquid service would be excluded from the routine monitoring and inspection requirements. However, if leaks are detected from these sources, the same allowable repair interval that applies to pumps, valves, connectors, and compressors would apply. These sources were excluded from routine monitoring on the basis that they contribute only a very small portion of overall emissions from a process unit and including them in the monitoring and equipment requirements was not considered reasonable.

9. Alternative Standards

Under the provisions of section 112(h) of the Act, if the Administrator establishes work practice, equipment, design, or operational standards, then the Administrator must allow use of alternative means of emission reductions if an owner or operator can demonstrate emission reductions equivalent to that achieved by the standards. Generally, alternative means of emission reduction are based on specific circumstances at individual plant sites and must be handled individually. During the course of the Committee's deliberations, however, two situations were identified where development of generic alternative standards was appropriate. These situations were batch processes and enclosed process units. Consequently, the negotiated rule includes alternative standards for batch operations and for process units located in enclosed buildings as well as general provisions for demonstration of equivalency.

a. *Batch processes.* At one of the early meetings of the Committee, the problems associated with application of LDAR programs to batch processes were raised. At continuous processes, equipment can be monitored rapidly, one after another on an established route, without consideration of the process schedule because there is always process fluid in the lines. For several reasons, rapid monitoring of one component after another is not possible at some batch processes. This is particularly true for processes such as those in the pharmaceutical industry where equipment may not be dedicated to a particular process and where different components are used in different batch operations to produce different products. In any particular configuration, process fluid may flow through a series of valves, connectors, and a pump into a reactor. Several hours later, the process fluid would exit the reactor through other equipment for subsequent processing steps and storage. Also, the equipment used will contain process fluids for only a brief period during the batch (e.g., a few minutes per batch). In this case, the monitoring team would have to wait for an extended time between screening equipment on the upstream and downstream side of the reactor. Equipment not used in a particular configuration could not be monitored until the equipment is in actual use. Thus, it would be difficult to schedule monitoring of equipment and the cost, both in total and on a component basis, could be much higher than for a continuous process. Moreover, this intermittent operation and low time-in-use of individual components also results in lower annual emissions.

For these reasons, the Committee formed a batch process subcommittee to develop alternative approaches that could be used for batch processes. This subcommittee explored various alternatives which would ensure effective control while considering the nature of batch operations. The subcommittee developed alternative procedures that allow owners or operators of batch processes the option of meeting standards similar to those for continuous processes or of periodically pressure testing the batch equipment. If the owner or operator elects to monitor equipment for leaks, the monitoring frequency is prorated to the time in use and the equipment may be monitored when it is in VHAP service or in use with a surrogate VOC or other detectable compound. These modifications to the continuous standards were designed to provide roughly comparable provisions for batch processes. In fact, as time in use increases to 75 percent and higher, the monitoring frequency becomes the same for both continuous and batch processes.

The alternative provisions allow pressure testing of batch equipment using either a gas or a liquid. The Committee allowed use of either procedure because hydrostatic testing can be safer than high pressure tests using gases and either technique can be used to demonstrate the equipment is not leaking. The criteria specified as defining a leak were based on a limited amount of field testing by the pharmaceutical industry, general industry practice for pressure tests, and the EPA's experience with vapor-tightness testing of tank trucks and railcars. Although little information is available for direct comparison, the Committee concluded, based on general knowledge and engineering considerations, that the relative cost and effectiveness of the alternative procedures for batch processes should be roughly comparable to those for continuous processes.

b. *Enclosed processes.* Processes operated in buildings or enclosures maintained under negative pressure and vented to the atmosphere through a 95-percent efficient control device would be exempted from the LDAR monitoring requirements. This alternative standard was developed because members of the Committee were aware of cases where processes have been isolated from personnel because of safety hazards. In such instances, no benefit will be achieved by monitoring the equipment, and it may present a safety hazard to monitoring personnel.

10. Delay of Repair

As previously noted, the Committee recognized that there are circumstances when repair of equipment is not feasible without a process unit shutdown and this may result in greater emissions than delaying repair until the next scheduled shutdown. The Committee, therefore, included the delay of repair provisions in the existing rules in the negotiated standard. A primary consideration of the Committee in this was whether the provisions reflected the actual feasibility of repairing equipment and avoided extended delays in returning a unit to production after it is shutdown briefly due to unforeseen circumstances. Based on this evaluation, the Committee agreed to modify the definition of "process unit shutdown" to reflect more accurately those situations where it was judged reasonable to require clearance of process materials and repair of equipment. The revised definition specifies that it must be technically feasible to clear process material from the unit consistent within safety constraints and that under certain circumstances unscheduled shutdowns of more than 24 hrs. duration are not classified as a shutdown. These conditions are: (1) The shutdown must be for a period shorter than the time required to clear process materials and start up the unit and (2) it must result in greater emissions than delaying the repair until the next scheduled shutdown.

The delay of repair provisions in the negotiated standard also include the other types of delay of repair provisions in the existing standards. The negotiated standard would allow delay of repair for spared equipment that does not remain in VHAP service. Delay of repair would also be allowed for valves, connectors, and agitators if the owner or operator shows that emissions of purged materials from repair would be greater than the emissions likely to result from delay of repair. When the equipment is repaired, the purged material must be destroyed or recovered in a control device that complies with the requirement for closed-vent systems and control devices. Delay of repair beyond a process unit shutdown for valves would also be allowed when unforeseen circumstances deplete valve assembly supplies. The owner or operator would have to document that valve assembly supplies had been sufficiently stocked. This delay of repair may not be extended beyond the next process unit shutdown unless the next shutdown occurs sooner than 6 months after the first shutdown. It is expected that this delay of repair provision will seldom be used.

As with the other types of equipment, delay of repair would be allowed for pumps that cannot be repaired without a process unit shutdown. Delay of repair, up to 6 months after detecting a leak, would also be allowed when the owner or operator determines that repair of the pump requires replacement of a SMS system with a DMS system, a pump with no externally actuated shaft, or a closed-vent control system. This provision differs slightly from the present standards in that it allows delay of repair for replacement of single seal pumps with other types of low leak technology. Delay of repair is not expected for most situations, however, because pumps are commonly spared.

G. Test Methods and Procedures

The negotiated standard basically retains the use of Method 21 to detect leaks of organic compounds from equipment; however, several modifications were made to the existing procedures. These modifications consist of changes to the calibration gases required, addition of procedures for response factor correction, and addition of procedures for pressure testing of batch processes. The bases for the changes to the provisions are described in this section.

Method 21 specifies procedures for measuring the concentration of leaks of VOC near individual pieces of process equipment. This method requires the use of a portable organic vapor analyzer that meets the method's performance specifications for response, linearity, flow rate, and safety. The instrument detector may be any that meets the methods specifications and performance criteria. Detector types that are believed to meet Method 21 specifications for most VHAP include catalytic oxidation, flame ionization, infrared absorption, and photoionization. Although these detectors have been shown to be broadly applicable to measurements of organic compounds, no one detector can be universally applied to all organic compounds: some VHAP may require evaluation of other types of detectors.

The negotiated standard would require calibration of the portable organic vapor analyzer before each monitoring survey with calibration gas mixtures consisting of methane and air and with zero gas. For this standard, zero gas has been specified as containing less than 0.2 ppm VOC in air. Zero gas was specified at a concentration below the less than 10 ppm criterion used in the existing standards in 40 CFR parts 60 and 61 to improve the quality of measurements near 0 ppm. The negotiated standard would also require calibration with mixtures of methane in air at concentrations near each of the various leak definitions. Therefore, in Phase III, calibration gases with VOC concentrations near 10,000 ppm, 5,000 ppm, 2,000 ppm, 1,000 ppm, and 500 ppm may be required at some plant sites, depending upon the equipment that is in use. To reduce the number of calibration gases required, the Committee agreed to allow the option of using an analyzer calibrated at a higher concentration, up to 2,000 ppm, for monitoring equipment subject to a lower leak definition. This provision was included since that procedure will introduce only a small positive bias (i.e., observed values will be slightly higher than actual) in the instrument readings and the results would be acceptable for demonstrating compliance.

The negotiated standard would also limit the acceptable range of response factors. The response factor is a factor which adjusts for differences in instrument sensitivity or response to the compounds being measured and to the reference compound. For the negotiated standard, the reference compound is methane. These provisions were added to ensure that the effect of the standard is not significantly altered by the instrument used in conducting the monitoring surveys or the stream composition. Correction of instrument readings for response factors is required where the individual response factors, at 500 ppm, for the VHAP that account for 90 percent, or more, by weight of organic materials in the process stream are 3 or greater. The requirement was structured in this manner to avoid imposition of unproductive costs. Specifically, the 90 percent by weight criterion was included in order to avoid the need to adjust response factors due to trace contaminants in process streams. For many compounds, response factors may not be available and cannot be obtained without considerable difficulty (e.g., solids, explosive substances, etc.). Where these compounds represent only a small fraction of the process stream composition, it was judged inappropriate to require development of response factors. The provision is included as a series of checks on compounds in the process streams and on the process streams. The steps are intended to eliminate quickly those streams for which response factor correction is obviously unnecessary. The first step looks at the individual compounds used in the process. If no compound in the process has a response factor of 3 or greater, then no further evaluation is needed. The second step looks at the individual streams to identify any that contain an individual compound or have a weighted average factor that is 3 or greater. The third step looks at streams with weighted average factors of 3 or more and considers whether to adjust the instrument readings or use another instrument or calibration gas.

The Committee also added procedures for pressure testing of batch process equipment to the negotiated standard. These procedures were derived from general industry practice and experience with gas and liquid pressure tests on equipment and EPA experience with testing tank trucks and railcars for vapor-tightness demonstration.

The negotiated standard also would specify that Method 18 is to be used to determine the VHAP content of process fluids whenever that is in question. Method 18 is a general procedure for gas chromatographic analysis of organic compounds. The method can be used to analyze roughly 90 percent of gaseous organic compounds emitted by sources. In most cases, engineering calculations, knowledge of the process, or analyses of the process should provide sufficient demonstration of VHAP content and Method 18 analysis will not be required.

H. Recordkeeping and Reporting

Owners or operators of a process unit that would be covered by the negotiated standard are subject to the recordkeeping and reporting requirements of the standard as well as those prescribed in the proposed General Provisions (subpart A) of 40 CFR part 63. Compliance with the standards will be assessed through inspections at the plant site and review of records and reports that document implementation of the requirements.

1. Recordkeeping

Records of leak detection, repair attempts, and maintenance for leaking equipment would be required by the negotiated standard. These records consist of the information needed to document compliance with: (1) Work practice standards, (2) equipment standards, (3) operational standards, (4) emission standards, and (5) information required for equipment subject to a QIP. These records are also necessary for evaluating the effectiveness of repair efforts. For equipment subject to equipment standards, records would be required of the dates of installation, equipment repair, and equipment modifications. For closed vent systems and control devices, records would be required of the location and type of equipment, the design specifications, and the monitoring parameters.

In many respects, the recordkeeping requirements would be similar to those in the existing standards for equipment leaks. Some differences between the standards result from the additional provisions of the negotiated standard while others result from changes made to clarify the requirements. In addition, changes were made to simplify the recordkeeping requirements and to reduce the associated burden.

These records must be maintained for a period of 2 years in a readily accessible recordkeeping system and made available to EPA upon request. This system may be maintained by physically locating the records at the plant site or by accessing the records from a central location by computer.

2. Reporting

The negotiated standard would require an initial report and semiannual reports of LDAR efforts as well as notifications of initiating monthly monitoring or a QIP for valves or pumps. The initial report is to be submitted for existing process units, or new process units with startup dates preceding the effective date of the negotiated rule, within 90 days after the (earliest) applicability date covering that process unit. The initial report for all other new process units would be submitted with the application for approval of construction, reconstruction, or modification as required by the General Provisions. This initial report would notify the Administrator that the process unit is (or will be) subject to this Subpart and identify the process unit, number and type of equipment components, and the method of compliance for each piece of equipment. The planned monitoring schedule for each type of equipment in each phase would also be required.

The semiannual report is to include information on the numbers of leaking and nonleaking components; leak frequencies of pumps, valves, and connectors; attempts to repair; reasons for delay of repair; process unit shutdowns; and changes in the information submitted in the initial report. The reports shall also include the results of performance tests conducted within the reporting period for equipment subject to a 500 ppm performance standard and notifications of initiation of monthly monitoring or QIP for valves or pumps.

IX. Administrative Requirements

A. Coordination With Other Clean Air Act Requirements

1. General Provisions

New General Provisions for 40 CFR part 63 standards will be proposed. When final, they will be published in 40 CFR part 63, subpart A. These provisions would apply to all source categories to be regulated under the NESHAP program after the Clean Air Act Amendments of 1990. Owners and operators of sources subject to the HON (subparts F through H) should review the General Provisions (subpart A) when they are proposed and must comply with all applicable requirements. The proposed subparts F through H specify any portions of the subpart A general provisions which are not applicable to

HON sources. A brief summary of the types of information contained in the General Provisions is provided here.

The General Provisions will contain definitions of key terms common to all NESHAP. Unless a term is defined differently in subparts F through H, the definitions in subpart A apply.

Provisions regarding prohibited activities and circumvention, as well as general operation and maintenance requirements that apply to all sources, will also be included in subpart A.

The General Provisions will contain information on compliance dates. The compliance dates for new and existing sources proposed in subparts F through H are applicable to sources covered by the HON and are consistent with the provisions of subpart A.

The General Provisions will contain information on when and how to conduct performance tests. Owners or operators who would be required to conduct performance tests by the proposed subparts F through H must also comply with the applicable performance test requirements in subpart A. However, as stated in subpart F, owners and operators do not have to prepare a site-specific test plan describing quality assurance because the test methods cited in the HON regulations already contain applicable quality assurance protocols within the methods. The industry is familiar with these methods and has used them under previous rulemakings, so a site-specific test plan would not be expected to provide additional assurance of quality data.

Requirements are specified for construction, reconstruction, and modification of sources. These include procedures for applications for approval prior to construction, reconstruction, or modification.

Several notification, recordkeeping, and reporting requirements will be included in the General Provisions. The dates and contents for various reports will be specified. The proposed subparts F through H detail how and when these reports must be submitted for HON sources. As specified in the General Provisions, records and copies of reports are to be retained for 5 years unless otherwise specified. Thus, unless specifically noted in the proposed HON, the owner or operator subject to subparts F through H would be required to comply with notification, reporting, and recordkeeping requirements in subpart A, as well as those in subparts F through H.

Finally, the General Provisions will contain a listing of materials that have been incorporated by reference and a section on the availability of information and confidentiality.

2. Operating Permit Program

Under title V of the Clean Air Act as amended in 1990, all HAP-emitting sources will be required to obtain an operating permit. As discussed in the rule establishing the operating permit program published on July 21, 1992 (57 FR 32251), this new permit program would include in a single document all of the emission limits, monitoring, recordkeeping, and reporting requirements that pertain to a single source. All applicable requirements of the HON will ultimately be included in the source's title V operating permit. The permit will contain Federally enforceable conditions with which the source must comply. Once a State's permit program has been approved, each chemical manufacturing plant within that State must apply for and obtain an operating permit. If the State wherein the chemical manufacturing plant is located does not have an approved permitting program, the owner or operator must submit the application to the Regional Office. The addresses for the Regional Offices and States will be included in the proposed General Provisions referenced in the previous section.

If a source has submitted an Implementation Plan as required in section 151 of subpart G, prior to the submission of an operating permit application, the information and limitations in that Implementation Plan must be incorporated into the operating permit application.

3. Control Techniques Guidelines

Section 183 of title I of the 1990 Clean Air Act Amendments requires EPA to publish 11 CTG's by November 1993. The purpose of CTG's is to provide guidance to States in developing rules to reduce VOC emissions in ozone nonattainment areas. Once EPA publishes a CTG, States must adopt rules for sources located in all but marginal nonattainment areas that are addressed by the CTG.

The EPA is currently developing four CTG's which affect the SOCMI industry. These four CTG's address reactor process vents, distillation process vents, volatile organic liquid storage vessels, and wastewater collection and treatment operations. The EPA has already published CTG's for SOCMI air oxidation process vents and equipment leaks. The four CTG's being developed will recommend the same control technology requirements as are contained in today's proposed rule (e.g., 98 percent/20 ppmv for process vents). The only difference between the CTG's and today's proposed rule is the applicability. There may be process vents, storage vessels, or wastewater streams in sources covered by today's rule that would not be subject to the Section 112 standards because they contain no HAP's or because they do not satisfy the relevant applicability criterion. These same emission points, however, may contain enough VOC to meet the applicability criteria recommended in the CTG's. When both the CTG's and the HON are in effect, a plant owner or operator may need to control more emission points than under either requirement alone. An owner or operator might be able to control more efficiently if aware of both sets of requirements during development of control strategies. For example, an owner or operator might wish to use a larger control device to control all the emission points addressed by the VOC and HAP rules together. To provide owners and operators this information for planning purposes, the EPA's intent is to publish the CTG's at or about the same time the HON is promulgated, if possible.

4. Emissions Trading Policy Statement

On December 4, 1986, the EPA published guidance for sources subject to State Implementation Plans to control their emissions of VOC's. This guidance, known as the Emissions Trading Policy Statement (51 FR 43814) established a system by which sources can trade emissions of VOC's. It includes a prohibition of trades that increase the volume of toxic chemicals emitted to the atmosphere. The EPA is currently investigating how the policies in the ETPS are influenced by the requirements in the 1990 Amendments to the Act. The relationship between the policy in the ETPS and the emissions averaging provisions in the HON may be further clarified, either by a separate notice supplementing the ETPS and the HON or in the final rulemaking for the HON.

5. Section 112(g) Modifications

Section 112(g) of the Act, as amended in 1990, sets out requirements that the Administrator must follow in developing a policy for approving modifications at major sources. This section also specifies that modifications to major existing sources cannot be allowed unless the MACT emissions limitation for the source will be met. In addition, no sources can be reconstructed or constructed unless the MACT emissions limitation for new sources will be met.

The policies established under section 112(g) will influence modifications and reconstruction at existing SOCMI sources and the construction of new SOCMI sources. In particular, the policies established under section 112(g) will determine if a certain change in operations and the resulting structural changes at an existing source is to be treated as a modification or a reconstruction. If a structural change is treated as a modification, existing source MACT, as required by the HON, must be applied, and the emission points associated with the change would be considered part of the existing source, making them available for emissions averaging with other emission points in the existing source. If the structural change is treated as a reconstruction, new source MACT, as required by the HON, must be applied and the emission points associated with the change would be considered part of a new source. Emission averaging cannot occur across sources, so the emission points in the reconstruction could only be averaged with each other, not with the points in the existing source.

Newly constructed sites, as determined by the upcoming provisions of section 112(g) policies, must be controlled with new source MACT and, like the points in a reconstructed source, could only be averaged with each other.

B. Executive Order 12291

Under E.O. 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the requirement of an RIA. The criteria set forth in section 1 of the Order for determining whether a regulation is a major rule are as follows: (1) Is likely to have an annual effect on the economy of $100 million or more; (2) is likely to cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governments; or (3) is likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed HON is a "major" rule and therefore subject to the requirements of an RIA.

The proposed regulation and RIA were submitted to the OMB for review as required by E.O. 12291. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES**. The docket is available for public inspection at the EPA's Air Docket Section, which is in the **ADDRESSES** section of this preamble.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1414.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW. (PM–223Y), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 1,600 hrs per response, and to require 3,200 hrs per recordkeeper annually. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: (1) Chief, Information Policy Branch, PM–223Y, U. S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and (2) the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities.

E. Review

This regulation will be reviewed 9 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 29, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. It is proposed that part 63 be amended by adding subparts F, G, and H, and adding and reserving subparts I, J, and K to read as follows:

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Equipment Leaks from Seven Other Processes

Sec.
63.100 Applicability and designation of source.
63.101 Definitions.
63.102 General standards.
63.103 General compliance, reporting, and recordkeeping provisions.
63.104 List of organic hazardous air pollutants.
63.105 List of synthetic organic chemical manufacturing industry chemicals.
63.106 Reserved.
63.107 Reserved.
63.108 Reserved.
63.109 Reserved.

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

Secs.

63.110 Applicability.
63.111 Definitions.
63.112 Emission limits.
63.113 Process vent provisions.
63.114 Process vent provisions—monitoring requirements.
63.115 Process vent provisions—methods and procedures for process vent group determination.
63.116 Process vent provisions—performance test methods and procedures to determine compliance.
63.117 Process vent provisions—reporting and recordkeeping requirements for group and TRE determinations and performance tests.
63.118 Process vent provisions—Periodic reporting and recordkeeping requirements.
63.119 Storage vessel provisions—reference control technology.
63.120 Storage vessel provisions—procedures to determine compliance.
63.121 Storage vessel provisions—alternative means of emission limitation.
63.122 Storage vessel provisions—reporting.
63.123 Storage vessel provisions—recordkeeping.
63.124 Reserved.
63.125 Reserved.
63.126 Transfer operations provisions—reference control technology.
63.127 Transfer operations provisions—monitoring requirements.
63.128 Transfer operations provisions—test methods and procedures.
63.129 Transfer operations provisions—reporting and recordkeeping for performance tests and notification of compliance status.
63.130 Transfer operations provisions—Periodic reporting and recordkeeping.
63.131 Process wastewater provisions—flow diagrams and tables.
63.132 Process wastewater provisions—general.
63.133 Process wastewater provisions—wastewater tanks.
63.134 Process wastewater provisions—surface impoundments.
63.135 Process wastewater provisions—containers.
63.136 Process wastewater provisions—individual drain systems.
63.137 Process wastewater provisions—oil-water separators.
63.138 Process wastewater provisions—treatment processes.
63.139 Process wastewater provisions—closed-vent systems and control devices.
63.140 Process wastewater provisions—delay of repair.
63.141 Reserved.
63.142 Reserved.
63.143 Process wastewater provisions—inspections and monitoring of operations.

Secs.

63.144 Process wastewater provisions—test methods and procedures to determine applicability.
63.145 Process wastewater provisions—test methods and procedures to determine compliance.
63.146 Process wastewater provisions—reporting.
63.147 Process wastewater provisions—recordkeeping.
63.148 Reserved.
63.149 Reserved.
63.150 Emissions averaging provisions.
63.151 Initial Notification and Implementation Plan.
63.152 General reporting.

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants From Synthetic Organic Chemical Manufacturing Industry Equipment Leaks

Secs.

63.160 Applicability and designation of sources.
63.161 Definitions.
63.162 Standards: General.
63.163 Standards: Pumps in light liquid service.
63.164 Standards: Compressors.
63.165 Standards: Pressure relief devices in gas/vapor service.
63.166 Standards: Sampling connection systems.
63.167 Standards: Open-ended valves or lines.
63.168 Standards: Valves in gas/vapor service and in light liquid service.
63.169 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service.
63.170 Standards: Product accumulator vessels.
63.171 Standards: Delay of repair.
63.172 Standards: Closed-vent systems and control devices.
63.173 Standards: Agitators in gas/vapor service and in light liquid service.
63.174 Standards: Connectors in gas/vapor service and in light liquid service.
63.175 Quality improvement program for valves.
63.176 Quality improvement program for pumps.
63.177 Alternative means of emission limitation: General.
63.178 Alternative means of emission limitation: Batch processes.
63.179 Alternative means of emission limitation: Enclosed-vented process units.
63.180 Test methods and procedures.
63.181 Recordkeeping requirements.
63.182 Reporting requirements.
63.183 List of volatile hazardous air pollutants.
63.184 List of hazardous organic chemicals production processes.
63.185 Reserved.
63.186 Reserved.
63.187 Reserved.
63.188 Reserved.
63.189 Reserved.

Subpart I—[Reserved]

Subpart J—[Reserved]

Subpart K—[Reserved]

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Equipment Leaks From Seven Other Processes

§ 63.100 Applicability and designation of source.

(a) This subpart provides applicability provisions, definitions, and other general provisions that are applicable to subparts G and H.

(b) Except as provided under paragraph (c) of this section,

(1) The provisions of subparts F, G, and H apply as follows:

(i) The provisions of subparts F and G apply to chemical manufacturing processes that manufacture as a product one or more of the chemicals listed in § 63.105 of this subpart, and are also located at a plant site that is a major source as defined in section 112(b) of the Act.

(ii) The provisions of subparts F and H apply to chemical manufacturing processes that manufacture as a product one or more of the chemicals listed in § 63.184 of subpart H, and are also located at a plant site that is a major source as defined in section 112(b) of the Act.

(iii) For chemical manufacturing processes that are designed and operated as either batch operations, or as flexible operation units, the provisions of subparts F, G, and H shall apply as specified in paragraphs (b)(1)(iii)(A) and (b)(1)(iii)(B) of this section.

(A) Subparts F and G apply only during time periods when the process is manufacturing as a product one or more of the chemicals listed in § 63.105 of this subpart and the process is located at a plant site that is a major source.

(B) Subparts F and H apply only during time periods when the process is manufacturing as a product one or more of the chemicals listed in § 63.184 of subpart H of this part and when the process is located at a plant site that is a major source.

(2) The provisions of subparts F and H also apply to emissions of designated volatile hazardous air pollutants from the manufacturing processes specified in paragraphs (b)(2)(i) through (b)(2)(vii) of this section. The specified manufacturing processes are further defined in § 63.160 and § 63.161 of subpart H.

(i) Styrene-butadiene rubber production (butadiene and styrene emissions only).

(ii) Polybutadiene production (butadiene emissions only).

(iii) Chlorine production (carbon tetrachloride emissions only).

(iv) Pesticide production (carbon tetrachloride, methylene chloride, and ethylene dichloride emissions only).

(v) Chlorinated hydrocarbon use (carbon tetrachloride, methylene chloride, tetrachloroethylene, chloroform, and ethylene dichloride emissions only).

(vi) Pharmaceutical production (carbon tetrachloride and methylene chloride emissions only).

(vii) Miscellaneous butadiene use (butadiene emissions only).

(3) The source to which this subpart applies is the collection of the process vents, storage vessels, transfer racks, wastewater and the associated treatment residuals, and equipment leaks that are associated with the chemical manufacturing processes specified in paragraph (b)(1) of this section, and are located at the same plant site. This subpart applies only to emission points that are part of major sources.

(i) If a chemical manufacturing process produces more than one intended chemical product, the product with the greatest annual design capacity on a mass basis determines the product of the process.

(ii) If a chemical manufacturing process has two or more products that have the same maximum annual design capacity on a mass basis and if one of those chemicals is listed in § 63.105 of this subpart or § 63.184 of subpart H, then the listed chemical is considered the intended product and the chemical manufacturing process is subject to this subpart. If more than one of the products is listed in § 63.105 or § 63.184, then the owner or operator may designate as the intended product any of the listed chemicals and the chemical manufacturing process is subject to this subpart.

(iii) If one or more of the chemicals listed in § 63.105 of this subpart is produced by a unit operation that is an integral part of a chemical manufacturing process that does not produce one of the chemicals in § 63.105 as its intended product, then the unit operation is not subject to this subpart. For example, if a distillation column is used to produce purified methyl methacrylate by removing an inhibitor, but the distillation column is part of the process to manufacture methyl methacrylate acrylonitrilebutadiene-styrene (MABS) resins, then the distillation column is considered part of the resins process and is not subject to this subpart.

(A) A unit operation is one or more pieces of process equipment used to make a single change to the physical or chemical characteristics of one or more process streams. Unit operations include reactors, distillation columns, extraction columns, decanters, compressors, condensers, boilers, and filtration equipment.

(B) For a unit operation to be an integral part of a chemical manufacturing process, at least 90 percent of the product stream from the unit operation must be used by the chemical manufacturing process.

(iv) The owner or operator shall determine the applicability of subparts F and G to storage vessels and transfer racks according to the procedures specified in paragraphs (b)(4) and (b)(5) of this section.

(v) The source does not include process vents that are associated with unit process operations that are designed and operated as batch operations.

(vi) The source does not include:

(A) Stormwater from segregated stormwater sewers;

(B) Spills; and

(C) Water from safety showers.

(vii) The source does not include those process vents, transfer racks, storage vessels, and wastewater streams that are not associated with the manufacture of chemicals listed in § 63.105 or do not contact or emit any of the chemicals listed in § 63.104, or are not associated with the handling of wastes generated by these chemical manufacturing processes.

(viii) The source does not include equipment leaks that are not associated with the manufacture of the chemicals listed in § 63.184 of subpart H, or do not contact or emit any of the chemicals listed in § 63.183 of subpart H.

(ix) For the purposes of subparts F and H, the source includes equipment leaks of the designated volatile hazardous air pollutants from the manufacturing processes identified in paragraph (b)(2) of this section, but does not include process vents, storage vessels, transfer racks, or wastewater streams from the manufacturing processes listed in paragraph (b)(2).

(4) Where a storage vessel is used exclusively by a chemical manufacturing process, the storage vessel shall be considered part of the equipment for that specific chemical manufacturing process. If a storage vessel is not dedicated to a single chemical manufacturing process, then the applicability of subparts F and G shall be determined according to the provisions in paragraphs (b)(4)(i) through (b)(4)(iv) of this section.

(i) If a storage vessel is shared among processes and one of the processes has the predominant use of the storage vessel, as described in paragraphs (b)(4)(i)(A) and (b)(4)(i)(B) of this section, then the storage vessel is part of that chemical manufacturing process.

(A) If the greatest input into the storage vessel is from a chemical manufacturing process located on the same plant site, then that chemical manufacturing process has the predominant use.

(B) If the greatest input into the storage vessel is provided from a process that is not located on the same plant site, then the predominant use is the process that receives the greatest amount of material from the storage vessel.

(ii) If a storage vessel is shared among chemical manufacturing processes so that there is no single predominant use, as described in paragraph (b)(4)(i) of this section, and at least one of those chemical manufacturing processes is subject to this subpart, the storage vessel shall be considered to be part of the chemical manufacturing process that is subject to this subpart. If more than one chemical manufacturing process is subject to this subpart, the owner or operator may assign the storage vessel to any of the chemical manufacturing processes subject to this subpart.

(iii) If predominant use of a storage vessel varies from year to year, then the applicability of this subpart shall be determined based on the utilization that occurred during the year preceding promulgation of this subpart. This determination shall be included in the Implementation Plan required by § 63.151 (c), (d), and (e) of subpart G or as part of an operating permit application.

(iv) If there is a change in the material stored in the storage vessel, the owner or operator shall reevaluate the applicability of this subpart to the vessel.

(5) Where a transfer rack is used exclusively by a chemical manufacturing process, the transfer rack shall be considered part of the equipment for that specific chemical manufacturing process. If a transfer rack is shared among several chemical manufacturing processes, then the applicability of subparts F and G shall be determined according to the provisions in paragraphs (b)(5)(i) through (b)(5)(vi) of this section.

(i) Where a transfer rack is not dedicated to a single chemical manufacturing process, the applicability of this subpart shall be determined at each loading arm or loading hose, as described in paragraph (b)(5)(ii) through (b)(5)(vi) of this section.

(ii) Each loading arm or loading hose that is dedicated to the transfer of liquid organic hazardous air pollutants from a chemical manufacturing process to which this subpart applies is part of that chemical manufacturing process and is subject to this subpart.

(iii) If a loading arm or loading hose is shared among processes, and one of the processes provides the greatest amount of the material that is loaded by the loading arm or loading hose, then the loading arm or loading hose is part of that process.

(iv) If a loading arm or loading hose is shared among processes so that there is no single predominant use as described in paragraph (b)(5)(iii) of this section and at least one of those chemical manufacturing processes is subject to this subpart, then the loading arm or hose is part of the chemical manufacturing process that is subject to this subpart. If more than one chemical manufacturing process is subject to this subpart, the owner or operator may assign the loading arm or loading hose or transfer rack to any of the chemical manufacturing processes subject to this subpart.

(v) If the predominant use of a loading arm or hose varies from year to year, then the applicability of this Subpart shall be determined based on the utilization that occurred during the year preceding promulgation of this subpart. This determination shall be included in the Implementation Plan required by § 63.151(c), (d), and (e) of subpart G or as part an operating permit application.

(vi) If there is a change in the material loaded at the loading arm or loading hose, the owner or operator shall reevaluate the applicability of this subpart to the loading arm or loading hose.

(c) The emission points regulated under subparts G and H of this part, and additional applicability criteria specific to each subpart are specified under those subparts.

(1) Subpart G pertains to emissions from process vents, storage vessels, transfer racks, and process wastewater streams and associated treatment residuals. Applicability provisions are contained in § 63.110 of subpart G.

(2) Subpart H pertains to emissions from equipment leaks. Applicability provisions are contained in § 63.160 of subpart H.

(3) The equipment leaks standards in subpart H of this part shall not apply to a product accumulator vessel if the vent from the product accumulator vessel is in compliance with the provisions for process vents in subpart G of this part.

(d) Any chemical manufacturing process that produces as a product any of the chemicals listed in § 63.105 of this subpart or in § 63.184 of subpart H, but does not use as a reactant or manufacture as a product, by-product, or co-product, one or more of the organic hazardous air pollutants listed in § 63.104 of this subpart or the volatile hazardous air pollutants listed in § 63.183 of subpart H is exempt from all provisions of subparts F, G, and H except the recordkeeping requirement in § 63.103(e) of this subpart.

(e) The provisions of subparts F, G, and H of this part do not apply to the processes specified in paragraphs (e)(1) through (e)(5) of this section.

(1) Research and development facilities, regardless of whether the facilities are located at the same plant site as a chemical manufacturing process that is subject to the provisions of subparts F, G, or H.

(2) Petroleum refining processes, regardless of whether the unit supplies feedstocks that include chemicals listed in § 63.105 of this subpart or § 63.184 of subpart H to chemical manufacturing processes that are subject to the provisions of subparts F, G, or H.

(3) Ethylene processes, regardless of whether the unit supplies feedstocks that include chemicals listed in § 63.105 of this subpart or § 63.184 of subpart H to chemical manufacturing processes that are subject to the provisions of subparts F, G, or H of this part.

(4) Equipment that does not contain organic hazardous air pollutants that is located within a chemical manufacturing process that is subject to this subpart.

(5) Chemical manufacturing processes that are located in coke by-product recovery plants.

(f) Sources subject to subparts F, G, or H are required to achieve compliance on or before the dates specified in paragraphs (f)(1), (f)(2), and (f)(3) of this section.

(1) New sources that commence construction or reconstruction after December 31, 1992 shall be in compliance with subparts F through G upon startup or the date of promulgation of this subpart, whichever is later, as provided in § 63.6(b) of subpart A of this part.[1]

(2) Existing sources shall be in compliance with subparts F and G no later than 3 years after the effective date of this subpart, as provided in § 63.6(c) of subpart A of this part,[2] unless an extension has been granted by the Administrator as provided in § 63.151 of subpart G or granted by the operating permit authority as provided in § 63.6(i) of subpart A of this part.[3]

(3) New and existing sources shall be in compliance with subpart H no later than the dates specified in subpart H.

(4) If a change is made to a chemical manufacturing process subject to subparts F and G, and the change is not subject to the provisions established under section 112(g) of the Act, and the change causes a Group 2 emission point to become a Group 1 emission point (as defined in § 63.111 of subpart G), then the owner or operator shall be in compliance with the subpart G requirements for the Group 1 emission point no later than 150 days after the process change is made. If such a change is made prior to the compliance dates specified in paragraphs (f)(1) or (f)(2) of this section, then the owner or operator shall be in compliance with the subpart G requirements for the Group 1 emission point by either the applicable compliance date in paragraph (f)(1) or (f)(2) or within 150 days after the process change, whichever is later.

(g) If any change is made to a chemical manufacturing process within a source (including but not limited to the alteration, upgrade, rebuild, or replacement of equipment used in the chemical manufacturing process), or if any additional emission point or chemical manufacturing process is added, the owner or operator shall determine whether the source is a new, existing, or modified source according to criteria established under section 112(g) of the Act.

§ 63.101 Definitions.

All terms used in this subpart and subparts G and H shall have the meaning given them in the Act, in subpart A of this part,[4] and in this section as follows:

Batch operation means a noncontinuous operation in which a discrete quantity or batch of feed is charged into a process unit and distilled or reacted at one time.

By-product means a chemical that is produced coincidentally during the production of another chemical.

Chemical manufacturing process means the equipment assembled and connected by pipes or ducts to manufacture as a product one or more chemicals. For the purpose of this subpart, chemical manufacturing process includes all the equipment associated with the unit operations including air oxidation, reactor, and distillation units, and any feed, intermediate and product storage vessels, and transfer racks assigned to the process according to the provisions of § 63.100(b)(4) and § 63.100(b)(5) of this subpart. A chemical manufacturing process is identified by its product.

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[1] The EPA will propose subpart A in a future document.

[2] See Footnote 1.

[3] The EPA will propose subpart A in the future.

[4] The EPA will propose subpart A in the future.

[5] The EPA will propose subpart A in the future.

Co-product means a chemical that is produced during the production of another chemical.

Emission point means an individual process vent, storage vessel, transfer rack, wastewater stream, or equipment leak.

Equipment leak means emissions of volatile hazardous air pollutants from a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, product accumulator vessel, and instrumentation system in volatile hazardous air pollutant service as defined in § 63.161 of subpart H, and any control devices or systems required by subpart H.

Ethylene process means a chemical manufacturing process in which ethylene and/or propylene are produced by separation from petroleum refining process streams or by subjecting hydrocarbons to high temperatures in the presence of steam and then separating and purifying these chemicals. The ethylene process includes all equipment used in the pretreatment of the raw materials and other associated streams, including streams containing one or more chemicals listed in § 63.104 or § 63.105 of this subpart or in § 63.183 or § 63.184 of subpart H which are subsequently extracted and purified in another chemical manufacturing process.

Flexible operation unit means a chemical manufacturing process that manufactures different chemical products periodically by alternating raw materials. These units are also referred to as campaign plants.

Heat exchange system means any cooling tower system or once-through cooling water system (river or pond water).

Impurity means a substance that is produced coincidentally with another chemical substance and is processed, used, or distributed with it.

Organic hazardous air pollutant or *organic HAP* means one of the chemicals listed in § 63.104 of this subpart.

Petroleum refining process, also referred to as a *petroleum refining process unit,* means a process that for the purpose of producing transportation fuels (such as gasoline and diesel fuels), heating oils (such as distillate and residual fuel oils), or lubricants; separates petroleum; or separates, cracks, or reforms unfinished derivatives. Examples of such units include, but are not limited to, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, and thermal processes.

Plant site means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Process vent means a gas stream containing greater than 0.005 weight percent organic hazardous air pollutant that is continuously discharged during operation of the unit from an air oxidation process, reactor process, or distillation operation within a chemical manufacturing process that meets all applicability criteria in § 63.100 of this subpart. Process vents include gas streams that are either discharged directly to the atmosphere or discharged to the atmosphere after diversion through a product recovery device. Process vents exclude relief valve discharges and leaks from equipment regulated under subpart H of this part, but include vents from product accumulator vessels.

Product means a compound or chemical which is manufactured as the intended product of the chemical manufacturing process. If a chemical manufacturing process produces more than one intended chemical product, the product with the greatest annual design capacity on a mass basis determines the product of the process. If a chemical manufacturing process has two or more products that have the same maximum annual design capacity on a mass basis and if only one of these chemicals is listed in § 63.105 of this subpart or § 63.184 of subpart H, then the listed chemical is considered to be the intended product. If more than one chemical is listed, then the owner or operator may designate as the intended product any of the listed chemicals.

Recovery device means an individual unit of equipment capable of and used for the purpose of recovering chemicals for use, reuse, or sale. Recovery devices include, but are not limited to, absorbers, carbon adsorbers, and condensers.

Research and development facility means laboratory and pilot plant operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and is not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner.

Startup, shutdown, and malfunction plan means the plan required under § 63.6(e) of Subpart A.[5] This plan details the procedures for operation and maintenance of the source during periods of startup, shutdown, and malfunction.

Storage vessel means a tank or other vessel used to store organic liquids that are on the list of chemicals in § 63.104 of this Subpart and that is part of the equipment in a chemical manufacturing process that meets the applicability criteria in § 63.100 of this subpart. Storage vessel does not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels with capacities smaller than 38 cubic meters; or

(4) Vessels storing liquids that contain organic hazardous air pollutants only as impurities.

Transfer operation means the loading of one or more liquid organic hazardous air pollutants at an operating pressure less than or equal to 204.9 kilopascals from a transfer rack within a chemical manufacturing process to which this Subpart applies into a tank truck or railcar.

Transfer rack means the loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill tank trucks or railcars. Transfer racks do not include racks transferring liquids that contain organic hazardous air pollutants only as impurities.

Volatile hazardous air pollutant or *VHAP,* as used in this subpart and subpart H means a substance listed in § 63.183 of subpart H.

Wastewater means organic hazardous air pollutant-containing water or process fluid discharged into an individual drain system and includes process wastewater, maintenance-turnaround wastewater, and maintenance wastewater.

(1) Organic hazardous air pollutant-containing water or process fluids contain at least 5 parts per million by weight total organic hazardous air pollutant and have a flow rate of 0.02

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[5] The EPA will propose subpart A in the future.

liter per minute, or greater, or a concentration of at least 10,000 parts per million by weight and any flow rate. Process fluid means any raw material, intermediate product, finished product, by-product, or waste product.

(2) Process wastewater is water or wastewater which, during manufacturing or processing, comes into direct contact with or results from the production or use of process fluids. Examples are product or feedtank drawdown; water formed during the chemical reaction or used as a reactant; water used to wash impurities from organic products or reactants; water used to cool or quench organic vapor streams through direct contact; and condensed steam from jet ejector systems pulling vacuum on vessels containing organics.

(3) Maintenance wastewater is wastewater generated by the draining of process fluid from components in the process unit into an individual drain system for maintenance performed during periods that are not process unit shutdowns.

(4) Maintenance-turnaround wastewater is wastewater created during a process unit shutdown or by maintenance activities during the period of the unit shutdown. Examples of activities that would generate such wastewaters are descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of low legs or high point bleeds, and draining of pumps into an individual drain system.

§63.102 General standards.

(a) Owners and operators of sources subject to this Subpart shall comply with the requirements of Subparts G and H of this Part.

(b) Owners and operators of sources subject to Subpart G shall comply with the requirements specified in paragraphs (b)(1) through (b)(4) of this section.

(1) Each owner or operator subject to this Subpart shall prepare a description of and implement the procedures specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section as part of the startup, shutdown, and malfunction plan required under § 63.6(e) of subpart A of this part.[6] The procedures shall be updated as specified in paragraphs (b)(1)(iii) and (b)(1)(iv) of this section.

(i) A description of maintenance turnaround procedures for management of wastewaters generated from the emptying and purging of equipment in the process during temporary shutdowns for inspections, maintenance, and repair (i.e., a maintenance turnaround). The description shall:

(A) Specify the process equipment or maintenance tasks that are anticipated to create HAP-containing wastewaters during a maintenance turnaround;

(B) Specify the procedures that will be followed to properly manage and control organic HAP emissions to the atmosphere; and

(C) Specify the procedures to be followed when clearing process fluid during a process unit shutdown.

(ii) A description of maintenance and housekeeping procedures used to ensure proper management of wastewaters generated by emptying and purging of equipment during periods not associated with a process unit shutdown. The procedures shall ensure that routine maintenance wastewaters are either collected and recycled or are destroyed or are collected and managed in a controlled drain system.

(iii) The owner or operator shall modify and update the maintenance turnaround procedures as needed following each maintenance turnaround based on the actions taken and the wastewaters generated in the preceding maintenance turnaround.

(iv) The owner or operator shall modify and update the housekeeping procedures for wastewaters generated during routine maintenance activities, as needed.

(2) For each heat exchange system that cools process equipment that is part of a chemical manufacturing process that is subject to the provisions of this subpart, the owner or operator shall comply with the requirements of paragraphs (b)(2)(i) through (b)(2)(v) of this section, except as provided in paragraph (b)(4) of this section.

(i) The cooling water shall be monitored monthly for the first 6 months and quarterly thereafter to detect leaks. Only HAP's that are present in the process fluid in concentrations greater than 5 percent by weight are required to be measured in the cooling water.

(ii) The samples shall be taken at the entrance and exit of each heat exchange system, except for process equipment that is piped in parallel with other equipment. For this case, samples may be taken of the total stream.

(iii) A minimum of three sets of samples shall be taken of the cooling water at the entrance and exit of the system, for a total of six samples. The concentration of total HAP in the cooling water shall be determined using an EPA-approved method. The average inlet and outlet concentrations shall then be calculated.

(iv) A leak is detected if either of the following two conditions is observed:

(A) A statistically significant increase of at least 1 part per million at the 95 percent confidence level, or

(B) A statistically significant increase of 1 percent at the 95 percent confidence level.

(v) If a leak is detected, it shall be repaired as soon as practicable but not later than 15 calendar days after it is detected, except as provided in paragraph (b)(3) of this section.

(3) Delay of repair of heat exchange systems for which leaks have been detected is allowed if either of the conditions in paragraphs (b)(3)(i) or (b)(3)(ii) of this section are met.

(i) If the repair is technically infeasible without a process unit shutdown. Repair of this equipment shall occur before the end of the next process unit shutdown.

(ii) If the equipment is isolated from the process and does not remain in HAP service.

(4) Each heat exchange system that is operated with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side is exempt from the requirements in paragraph (b)(2) of this section.

(c) If, in the judgment of the Director of the EPA Office of Air Quality Planning and Standards, an alternative means of emission limitation will achieve a reduction in organic HAP emissions at least equivalent to the reduction in organic HAP emissions from that source achieved under any design, equipment, work practice, or operational standards in subparts G or H, the Director will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(1) The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(2) Any notice under paragraph (c) of this section shall be published only after public notice and an opportunity for a hearing.

(3) Any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves equivalent emission reductions.

(d) Each owner or operator of a source subject to this subpart shall obtain a part 70 or part 71 permit from the appropriate permitting authority.

(1) If EPA has approved a State operating permit program under part 71,

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[6] The EPA will propose subpart A in the future.

the permit shall be obtained from the State authority. If the State operating permit program has not been approved, the source shall apply to the EPA regional office pursuant to part 70.

(2) If an operating permit application has not been submitted by the dates specified in § 63.151(c) of subpart G of this part, the owner or operator shall submit an Implementation Plan as specified in § 63.151 (c), (d), and (e) of subpart G.

(e) The requirements in subparts F, G, and H are federally enforceable under section 112 of the Clean Air Act on and after the dates specified in § 63.100(f) of this subpart.

§ 63.103 General compliance, reporting, and recordkeeping provisions.

(a) All provisions in §§ 63.1 through 63.15 of subpart A of this part[7] apply to owners and operators of sources subject to subparts F through H of this part, except:

(1) The provisions of § 63.6(f)(4) of subpart A;[8]

(2) The performance test notification and quality assurance plan provisions of § 63.7 (b) and (c) of subpart A;[9]

(3) The continuous monitoring system provisions of § 63.8(c)(4), (c)(6), (d), (e), and (g) of subpart A;[10]

(4) The notification provisions of § 63.9(b)(2), (b)(3), (b)(6), (e), and (g) of subpart A;[11]

(5) The recordkeeping and reporting provisions of § 63.10(b)(1), (b)(2)(vii), (c), and (e) of subpart A.[12]

(b) Initial performance tests shall be required only as specified in subparts G and H of this part.

(1) Performance tests shall be conducted according to the schedule and procedures in § 63.7(a) of subpart A of this part[13] and the applicable sections of subparts G and H.

(2) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present during the test.

(3) Performance tests shall be conducted according to the provisions of § 63.7(e),[14] except that performance tests shall be conducted at maximum representative operating conditions for the process. During the performance test, an owner or operator may operate the control or recovery device at maximum or minimum representative operating conditions as appropriate for the type of control or recovery device.

(4) Data shall be reduced in accordance with the EPA-approved methods specified in the applicable subpart or, if other test methods are used, the data and methods shall be validated according to the protocol in Method 301 of appendix A of this part.

(c) Each owner or operator of a source subject to subparts F, G, and H shall keep copies of all applicable reports and records required by subparts F, G, and H for at least 5 years, except as otherwise specified in subparts G or H. All applicable records shall be maintained in such a manner that they can be readily accessed. This could include hard copy or computer records maintained on-site at the source or accessing the records from a central location by computer.

(d) All reports required under subparts F through H shall be sent to the Administrator at the addresses listed in § 63.13 of subpart A of this part,[15] except as provided in paragraph (d)(1) of this section.

(1) Requests for permission to use an alternative means of compliance as provided for in § 63.102(c) of this subpart and application for approval of a nominal efficiency as provided for in § 63.150(h)(1) and § 63.150(h)(6) of subpart G shall be submitted to the Director of the EPA Office of Air Quality Planning and Standards rather than to a State permitting authority.

(2) If the same emission point is subject to the provisions of subparts G or H and also to another applicable subpart of 40 CFR parts 60, 61, or 63, the owner or operator shall meet the most stringent standards applicable to the emission point. The records kept and reports submitted under the most stringent standard shall be sufficient to verify compliance with all applicable subparts. Duplicative recordkeeping and reporting of the same information under multiple subparts shall not be required.

(e) Information, data, and analyses used to determine that a chemical manufacturing process does not use as a reactant or manufacture as a product any organic hazardous air pollutant or volatile hazardous air pollutant shall be recorded. Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

§ 63.104 List of organic hazardous air pollutants.

Table 1 provides the list of organic hazardous air pollutants regulated under this subpart and subpart G.

TABLE 1.—ORGANIC HAZARDOUS AIR POLLUTANTS

Chemical name[a,b]	CAS No.[c]
Acetaldehyde	75070
Acetamide	60355
Acetonitrile	75058
Acetophenone	98862
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Allyl chloride	107051
Aniline	62533
o-Anisidine	90040
Benzene	71432
Benzotrichloride	98077
Benzyl chloride	100447
Biphenyl	92524
Bis(chloromethyl)ether	542881
Bromoform	75252
1,3-Butadiene	106990
Caprolactam	105602
Carbon disulfide	75150
Carbon tetrachloride	56235
Chloroacetic acid	79118
2-Chloroacetophenone	532274
Chlorobenzene	108907
Chloroform	67663
Chloroprene	126998
Cresols and cresylic acids (mixed)	1319773
o-Cresol and o-cresylic acid	95487
m-Cresol and m-cresylic acid	108394
p-Cresol and p-cresylic acid	106445
Cumene	98828
1,4-Dichlorobenzene(p-)	106467
3,3'-Dichlorobenzidine	91941
Dichloroethyl ether (Bis(2-chloroethyl)ether)	111444
1,3-Dichloropropene	542756
Diethanolamine	111422
N,N-Dimethylaniline	121697
Diethyl sulfate	64675
3,3'-Dimethylbenzidine	119937
Dimethylformamide	68122
1,1-Dimethylhydrazine	57147
Dimethyl phthalate	131113
Dimethyl sulfate	77781
2,4-Dinitrophenol	51285
2,4-Dinitrotoluene	121142
1,4-Dioxane (1,4-Diethyleneoxide)	123911
1,2-Diphenylhydrazine	122667
Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106898
Ethyl acrylate	140885
Ethylbenzene	100414
Ethyl chloride (Chloroethane)	75003
Ethylene dibromide (Dibromoethane)	106934
Ethylene dichloride (1,2-Dichloroethane)	107062
Ethylene glycol	107211
Ethylene oxide	75218
Ethylidene dichloride (1,1-Dichloroethane)	75343
Formaldehyde	50000
Glycol ethers[d]	....
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachloroethane	67721
Hexane	100543
Hydroquinone	123319
Isophorone	78591
Maleic anhydride	108316
Methanol	67561
Methyl bromide (Bromomethane)	74839
Methyl chloride (Chloromethane)	74873
Methyl chloroform (1,1,1-Trichloroethane)	71556

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[7] The EPA will propose subpart A in the future.

[8] See Footnote 7.

[9] See Footnote 7.

[10] See Footnote 7.

[11] See Footnote 7.

[12] See Footnote 7.

[13] The EPA will propose subpart A in the future.

[14] See Footnote 13.

[15] The EPA will propose subpart A in the future.

TABLE 1.—ORGANIC HAZARDOUS AIR POLLUTANTS—Continued

Chemical name[a,b]	CAS No.[c]
Methyl ethyl ketone (2-Butanone)	78933
Methyl hydrazine	60344
Methyl isobutyl ketone (Hexone)	108101
Methyl isocyanate	624839
Methyl methacrylate	80626
Methyl tert-butyl ether	1634044
Methylene chloride (Dichloromethane)	75092
Methylene diphenyl diisocyanate (MDI)	101688
4,4'-Methylenedianiline	101779
Naphthalene	91203
Nitrobenzene	98953
4-Nitrophenol	100027
2-Nitropropane	79469
Phenol	108952
p-Phenylenediamine	106503
Phosgene	75445
Phthalic anhydride	85449
Polycyclic organic matter[e]	....
Propiolactone (beta-isomer)	57578
Propionaldehyde	123386
Propylene dichloride (1,2-Dichloropropane)	78875
Propylene oxide	75569
Quinone	106514
Styrene	100425
1,1,2,2-Tetrachloroethane	79345
Tetrachloroethylene (Perchloroethylene)	127184
Toluene	108883
2,4-Toluene diamine	95807
2,4-Toluene diisocyanate	584849
o-Toluidine	95534
1,2,4-Trichlorobenzene	120821
1,1,2-Trichloroethane	79005
Trichloroethylene	79016
2,4,5-Trichlorophenol	95954
Triethylamine	121448
2,2,4-Trimethylpentane	540841
Vinyl acetate	108054
Vinyl chloride	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354
Xylenes (isomers and mixtures)	1330207
o-Xylene	95476
m-Xylene	108383
p-Xylene	106423

[a] For all listings above containing the word "Compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic) as part of that chemical's infrastructure.

[b] Isomer means all structural arrangements for the same number of atoms of each element and does not mean salts, esters, or derivatives.

[c] CAS Number=Chemical Abstract Service number.

[d] Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH$_2$CH$_2$)$_n$-OR' where n=1, 2, or 3; R=alkyl or aryl groups; and R'=R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH$_2$CH$_2$)$_n$-OH Polymers are excluded from the glycol category.

[e] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 °C.

§ 63.105 List of synthetic organic chemical manufacturing industry chemicals.

Table 2 provides the list of synthetic organic chemical manufacturing industry chemicals. Chemical manufacturing processes producing these chemicals as products are subject to this subpart and to subpart G as provided in § 63.100 of this subpart.

TABLE 2.—SYNTHETIC ORGANIC CHEMICAL MANUFACTURING INDUSTRY CHEMICALS

Chemical name[a]	CAS No.[b]
Acenaphthene	83329
Acetal	105577
Acetaldehyde	75070
Acetaldol	107891
Acetamide	60355
Acetanilide	103844
Acetic acid	64197
Acetic anhydride	108247
Acetoacetanilide	102012
Acetone	67641
Acetone cyanohydrin	75865
Acetonitrile	75058
Acetophenone	98862
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Adiponitrile	111693
Alizarin	72480
Alkyl anthraquinones	008
Allyl alcohol	107186
Allyl chloride	107051
Allyl cyanide	109751
Aminophenol sulfonic acid	0010
Aminophenol (p-)	123308
Aniline	62533
Aniline hydrochloride	142041
Anisidine (o-)	90040
Anthracene	120127
Anthraquinone	84651
Azobenzene	103333
Benzaldehyde	100527
Benzene	71432
Benzenedisulfonic acid	98486
Benzenesulfonic acid	98113
Benzil	134816
Benzilic acid	76937
Benzoic acid	65850
Benzoin	119539
Benzonitrile	100470
Benzophenone	119619
Benzotrichloride	98077
Benzoyl chloride	98884
Benzyl acetate	140114
Benzyl alcohol	100516
Benzyl benzoate	120514
Benzyl chloride	100447
Benzyl dichloride	98873
Biphenyl	92524
Bisphenol A	80057
Bis(Chloromethyl)Ether	542881
Bromobenzene	108861
Bromoform	75252
Bromonaphthalene	27497514
Butadiene (1,3-)	106990
Butanediol (1,4-)	110634
Butyl acrylate (n-)	141322
Butylbenzyl phthalate	85687
Butylene glycol (1,3-)	107880
Butyrolacetone	96480
Caprolactam	105602
Carbaryl	63252
Carbazole	86748
Carbon disulfide	75150
Carbon tetrabromide	558134
Carbon tetrachloride	56235
Carbon tetrafluoride	75730
Chloral	75876
Chloroacetic acid	79118
Chloroacetophenone (2-)	532274
Chloroaniline (p-)	106478
Chlorobenzene	108907
Chlorodifluoroethane	25497294
Chlorodifluoromethane	75456
Chloroform	67663
Chloronaphthalene	25586430
Chloronitrobenzene (1,3-)	121733
Chloronitrobenzene (o-)	88733
Chloronitrobenzene (p-)	100005
Chlorophenol (m-)	108430
Chlorophenol (o-)	95578
Chlorophenol (p-)	106489
Chloroprene	126998
Chlorotoluene (m-)	108418
Chlorotoluene (o-)	95498
Chlorotoluene (p-)	106434
Chlorotrifluoromethane	75729
Chrysene	218019
Cresol and cresylic acid (m-)	108394
Cresol and cresylic acid (o-)	95487
Cresol and cresylic acid (p-)	106445
Cresols and cresylic acids (mixed)	1319773
Crotonaldehyde	123739
Cumene	98828
Cumene hydroperoxide	80159
Cyanoacetic acid	372098
Cyanoformamide	0011
Cyclohexane	110827
Cyclohexanol	108930
Cyclohexanone	108941
Cyclohexylamine	108918
Cyclooctadienes	29965977
Decahydronaphthalene	91178
Diacetoxy-2-Butene (1,4-)	0012
Diallyl phthalate	131179
Diaminophenol hydrochloride	137097
Dibromomethane	74953
Dibutoxyethyl phthalate	117839
Dichloroaniline (mixed isomers)	27134276
Dichlorobenzene (p-)	106467
Dichlorobenzene (m-)	541731
Dichlorobenzene (o-)	95501
Dichlorobenzidine (3,3'-)	91941
Dichlorodifluoromethane	75718
Dichloroethane (1,2-) (Ethylene dichloride) (EDC)	107062
Dichloroethyl ether	111444
Dichloroethylene (1,2-)	540590
Dichlorophenol (2,4-)	120832
Dichloropropene (1,3-)	542756
Dichlorotetrafluoroethane	1320372
Dichloro-1-butene (3,4-)	760236
Dichloro-2-butene (1,4-)	764410
Diethanolamine	111422
Diethyl phthalate	84662
Diethyl sulfate	64675
Diethylamine	109897
Diethylaniline (2,6-)	579668
Diethylene glycol	111466
Diethylene glycol dibutyl ether	112732
Diethylene glycol diethyl ether	112367
Diethylene glycol dimethyl ether	111966
Diethylene glycol monobutyl ether acetate	124174
Diethylene glycol monobutyl ether	112345
Diethylene glycol monoethyl ether acetate	112152
Diethylene glycol monoethyl ether	111900
Diethylene glycol monohexyl ether	112594
Diethylene glycol monomethyl ether acetate	629389
Diethylene glycol monomethyl ether	111773
Dihydroxybenzoic acid (Resorcylic acid)	27138574
Diisodecyl phthalate	26761400
Diisooctyl phthalate	27554263
Dimethylbenzidine (3,3'-)	119937
Dimethyl ether	115106
Dimethylformamide (N,N-)	68122
Dimethylhydrazine (1,1-)	57147
Dimethyl phthalate	131113
Dimethyl sulfate	77781
Dimethyl terephthalate	120616
Dimethylamine	124403
Dimethylaminoethanol (2-)	108010
Dimethylaniline (N,N)	121697
Dinitrobenzenes (NOS)	25154545
Dinitrophenol (2,4-)	51285
Dinitrotoluene (2,4-)	121142

TABLE 2.—SYNTHETIC ORGANIC CHEMICAL MANUFACTURING INDUSTRY CHEMICALS—Continued

Chemical name[a]	CAS No.[b]
Dioxane	123911
Dioxolane (1,3-)	646060
Diphenyl methane	101815
Diphenyl oxide	101848
Diphenyl thiourea	102089
Diphenylamine	122394
Dipropylene glycol	110985
Di(2-methoxyethyl)phthalate	117828
Di-o-tolyguanidine	97392
Dodecyl benzene (branched)	123013
Dodecyl phenol (branched)	0013
Dodecylaniline	28675174
Dodecylbenzene (n-)	121013
Dodecylphenol	27193868
Epichlorohydrin	106898
Ethane	74840
Ethanolamine	141435
Ethyl acrylate	140885
Ethylbenzene	100414
Ethyl chloride	75003
Ethyl chloroacetate	105395
Ethylamine	75047
Ethylaniline (n-)	103695
Ethylaniline (o-)	578541
Ethylcellulose	9004573
Ethylcyanoacetate	105566
Ethylene carbonate	96491
Ethylene dibromide	106934
Ethylene glycol	107211
Ethylene glycol diacetate	111557
Ethylene glycol dibutyl ether	112481
Ethylene glycol diethyl ether (1,2-diethoxyethane)	629141
Ethylene glycol dimethyl ether	110714
Ethylene glycol monoacetate	542596
Ethylene glycol monobutyl ether acetate	112072
Ethylene glycol monobutyl ether	111762
Ethylene glycol monoethyl ether acetate	111159
Ethylene glycol monoethyl ether	110805
Ethylene glycol monohexyl ether	003
Ethylene glycol monomethyl ether acetate	110496
Ethylene glycol monomethyl ether	109864
Ethylene glycol monooctyl ether	002
Ethylene glycol monophenyl ether	122996
Ethylene glycol monopropyl ether	2807309
Ethylene oxide	75218
Ethylenediamine	107153
Ethylenediamine tetracetic acid	60004
Ethylenimine (Aziridine)	151564
Ethylhexyl acrylate (2-isomer)	103117
Fluoranthene	206440
Formaldehyde	50000
Formamide	75127
Formic acid	64186
Fumaric acid	110178
Glutaraldehyde	111308
Glyceraldehyde	367475
Glycerol	56815
Glycerol tri(polyoxypropylene)ether	25791962
Glycine	56406
Glyoxal	107222
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachloroethane	67721
Hexadiene (1,4-)	592450
Hexamethylenetetramine	100970
Hexane	110543
Hexanetriol (1,2,6-)	106694
Hydroquinone	123319
Hydroxyadipaldehyde	0016
Iminodiethanol (2,2-)	111422
Isobutyl acrylate	106638
Isobutylene	115117
Isophorone	78591
Isophorone nitrile	0017
Isophthalic acid	121915
Isopropylphenol	25168063
Lead phthalate	0018
Linear alkylbenzene	....
Maleic anhydride	108316
Maleic hydrazide	123331
Malic acid	6915157
Metanilic acid	121471
Methacrylic acid	79414
Methanol	67561
Methionine	63683
Methyl acetate	79209
Methyl acrylate	96333
Methyl bromide	74839
Methyl chloride	74873
Methyl ethyl ketone	78933
Methyl formate	107313
Methyl hydrazine	60344
Methyl isobutyl carbinol	108112
Methyl isocyanate	624839
Methyl mercaptan	74931
Methyl methacrylate	80626
Methyl phenyl carbinol	98851
Methyl tert-butyl ether	1634044
Methylamine	74895
Methylaniline (n-)	100618
Methylcyclohexane	108872
Methylcyclohexanol	25639423
Methylcyclohexanone	1331222
Methylene chloride	75092
Methylene dianiline (4,4'-isomer)	101779
Methylene diphenyl diisocyanate (4,4'-) (MDI)	101688
Methylionones (a-)	79696
Methylpentynol	77758
Methylstyrene (a-)	98839
Naphthalene	91203
Naphthalene sulfonic acid (a-)	85472
Naphthalene sulfonic acid (b-)	120183
Naphthol (a-)	90153
Naphthol (b-)	135193
Naphtholsulfonic acid (1-)	567180
Naphthylamine sulfonic acid (1,4-)	84866
Naphthylamine sulfonic acid (2,1-)	81163
Naphthylamine (1-)	134327
Naphthylamine (2-)	91598
Nitroaniline (m-)	99092
Nitroaniline (o-)	88744
Nitroanisole (o-)	91236
Nitroanisole (p-)	100174
Nitrobenzene	98953
Nitronaphthalene (1-)	86577
Nitrophenol (p-)	100027
Nitrophenol (o-)	88755
Nitropropane (2-)	79469
Nitrotoluene (all isomers)	1321126
Nitrotoluene (o-)	88722
Nitrotoluene (m-)	99081
Nitrotoluene (p-)	99990
Nitroxylene	25168041
Nonylbenzene (branched)	1081772
Nonylphenol	25154523
N-Vinyl-2-Pyrrolidine	88120
Octene-1	111660
Octylphenol	27193288
Paraformaldehyde	30525894
Paraldehyde	123637
Pentachlorophenol	87865
Pentaerythritol	115775
Peracetic acid	79210
Perchloroethylene	127184
Perchloromethyl mercaptan	594423
Phenanthrene	85018
Phenetidine (p-)	156434
Phenol	108952
Phenolphthalein	77098
Phenolsulfonic acids (all isomers)	1333397
Phenyl anthranilic acid (all isomers)	91407
Phenylenediamine (p-)	106503
Phloroglucinol	108736
Phosgene	75445
Phthalic acid	88993
Phthalic anhydride	85449
Phthalimide	85416
Phthalonitrile	91156
Picoline (b-)	108996
Piperazine	110850
Polyethylene glycol	25322683
Polypropylene glycol	25322694
Propiolactone (beta-)	57578
Propionaldehyde	123386
Propionic acid	79094
Propylene carbonate	108327
Propylene dichloride	78875
Propylene glycol	57556
Propylene glycol monomethyl ether	107982
Propylene oxide	75569
Pyrene	129000
Pyridine	110861
p-tert-Butyl toluene	98511
Quinone	106514
Resorcinol	108463
Salicylic acid	69727
Sodium methoxide	124414
Sodium phenate	139026
Stilbene	588590
Styrene	100425
Succinic acid	110156
Succinonitrile	110612
Sulfanilic acid	121573
Sulfolane	126330
Tartaric acid	526830
Terephthalic acid	100210
Tetrabromophthalic anhydride	632791
Tetrachlorobenzene (1,2,4,5-)	95943
Tetrachloroethane (1,1,2,2-)	79345
Tetrachlorophthalic anhydride	117088
Tetraethyl lead	78002
Tetraethylene glycol	112607
Tetraethylenepentamine	112572
Tetrahydrofuran	109999
Tetrahydronapthalene	119642
Tetrahydrophthalic anhydride	85438
Tetramethylenediamine	110601
Tetramethylethylenediamine	110189
Tetramethyllead	....
Thiocarbanilide	102089
Toluene	108883
Toluene 2,4 diamine	95807
Toluene 2,4 diisocyanate	584849
Toluene diisocyanates (mixture)	26471625
Toluene sulfonic acids	104154
Toluenesulfonyl chloride	98599
Toluidine (o-)	95534
Trichloroaniline (2,4,6-)	634935
Trichlorobenzene (1,2,3-)	87616
Trichlorobenzene (1,2,4-)	120821
Trichloroethane (1,1,1-)	71556
Trichloroethane (1,1,2-)	79005
Trichloroethylene	79016
Trichlorofluoromethane	75694
Trichlorophenol (2,4,5-)	95954
Trichlorotrifluoroethane (1,2,2 -1,1,2)	76131
Triethanolamine	102716
Triethylamine	121448
Triethylene glycol	112276
Triethylene glycol dimethyl ether	112492
Triethylene glycol monoethyl ether	....
Triethylene glycol monomethyl ether	112356
Trimethylamine	75503
Trimethylcyclohexanol	933482
Trimethylcyclohexanone	2408379
Trimethylcyclohexylamine	007
Trimethylolpropane	77996
Trimethylpentane (2,2,4-)	540841
Tripropylene glycol	24800440
Vinyl acetate	108054
Vinyl chloride	75014
Vinyl toluene	25013154

TABLE 2.—SYNTHETIC ORGANIC CHEMICAL MANUFACTURING INDUSTRY CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Vinylcyclohexene (4-)	100403
Vinylidene chloride	75354
Vinyl(N)-pyrrolidone(2-)	88120
Xanthates	140896
Xylene sulfonic acid	25321419
Xylenes (NOS)	1330207
Xylene (m-)	108383
Xylene (o-)	95476
Xylene (p-)	106423
Xylenol	1300716

[a] Isomer means all structural arrangements for the same number of atoms of each element and does not mean salts, esters, or derivatives.

[b] CAS Number = Chemical Abstract Service number.

§63.106 [Reserved]

§63.107 [Reserved]

§63.108 [Reserved]

§63.109 [Reserved]

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

§63.110 Applicability.

(a) This Subpart applies to all process vents, storage vessels, transfer operations, and wastewater streams subject to Subpart F of this Part.

(b) For purposes of this Subpart, process vents include all vents meeting the definition in §63.101 of subpart F and that discharge vent streams containing greater than 0.005 weight-percent organic HAP, except that process vents do not include the following:

(1) Process vents associated with unit process operations that are designed and operated as batch operations.

(2) Vents from recovery devices installed to control emissions from wastewater treatment operations in compliance with the wastewater provisions of this subpart in §§63.132 to 63.147.

(c) For purposes of this Subpart, storage vessels include all vessels meeting the definition in §63.101 of subpart F that store liquids that are on the list of organic HAP's in §63.104 of subpart F, except that storage vessels do not include the following:

(1) Vessels storing liquids containing organic hazardous air pollutants as impurities. An impurity is produced coincidentally with another chemical substance, and is processed, used, or distributed with it.

(2) Product accumulator vessels. Emissions from product accumulator vessels are considered to be process vents or equipment leaks.

(3) Wastewater storage tanks. Wastewater storage tanks are covered under the wastewater provisions.

(d)(1) For purposes of this subpart, transfer racks include all racks meeting the definition in §63.101 of subpart F that transfer liquid products that are on the list of organic hazardous air pollutants in §63.104 of subpart F. Except as provided in paragraph (d)(3) of this section, transfer racks do not include the following:

(i) Racks that only transfer liquids containing organic HAP's as impurities. An impurity is produced coincidentally with another chemical substance and is processed, used, or distributed with it.

(ii) Racks that vapor balance during all loading operations.

(2) Except as provided in paragraph (d)(3) of this section, the transfer provisions in §§63.126 through 63.130 do not apply to:

(i) Operations during which only liquids containing no organic HAP's or liquids containing organic HAP's only as impurities are transferred.

(ii) Operations during which vapor balancing is used.

(3) If during operations at a rack, vapors are vapor balanced, the owner or operator may elect to designate the rack as a transfer rack and comply with the provisions of §§63.126 through 63.130.

(e) This subpart applies to the following process wastewater streams and associated treatment residuals:

(1) All streams meeting the definition of wastewater in §63.101 of subpart F, that contain greater than or equal to 5 parts per million by weight total VOHAP and have a flow rate greater than or equal to 0.02 liter per minute.

(2) Residuals removed from wastewater streams identified in paragraphs (e) (1) and (2) of this section.

§63.111 Definitions.

Air oxidation process means a unit process that uses air, or a combination of air and oxygen, as an oxygen source in combination with one or more organic reactants to produce one or more organic compounds.

Average concentration, as used in the wastewater provisions, means the flow-weighted annual average concentration, as determined according to the procedures specified in §63.144(b).

Average flow rate, as used in the wastewater provisions, means the annual average flow rate, as determined according to the procedures specified in §63.144(e).

Batch operation means a noncontinuous operation in which a discrete quantity or batch of feed is charged into a process unit and distilled or reacted at one time.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator.

By compound means by individual stream components, not carbon equivalents.

Car-seal means a seal that is placed on a device that is used to change the position of a valve (e.g., from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic hazardous air pollutant vapors.

Container, as used in the wastewater provisions, means any portable waste management unit in which a material is stored, transported, treated, or otherwise handled. Examples of containers are drums, barrels, tank trucks, barges, dumpsters, tank cars, dump trucks, and ships.

Continuous record means documentation, either in hard copy or computer readable form, of data values measured and recorded at least once every 15 minutes. If data values are measured more frequently than once every 15 minutes, the continuous record means either: a record of each 15-minute block average calculated from all measured data values during each 15-minute period; or a record of all measured values.

Continuous recorder means a data recording device recording an instantaneous data value at least once every 15 minutes.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Continuous vapor processing system means a vapor processing system that treats total organic compound vapors collected from tank trucks or railcars on a demand basis without intermediate accumulation in a vapor holder.

Control device means any equipment used for recovering or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents, recovery devices are not considered control devices.

Cover, as used in the wastewater provisions, means a device or system which is placed on or over a waste management unit containing wastewater or residuals so that the entire surface area is enclosed and sealed to minimize air emissions. A cover may have openings necessary for operation, inspection, and maintenance of the waste management unit such as access hatches, sampling ports, and gauge wells provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a wastewater tank, a lid installed on a container, and an air-supported enclosure installed over a waste management unit.

Distillation operation means an operation separating one or more feed stream(s) into two or more exit stream(s), each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

Distillation unit means a device or vessel in which distillation operations occur, including all associated internals (such as trays or packing) and accessories (such as reboiler, condenser, vacuum pump, steam jet, etc.), plus any associated recovery system.

External floating roof means a pontoon-type or double-deck-type cover that rests on the liquid surface in a storage vessel or waste management unit with no fixed roof.

Fill or *filling* means the introduction of organic hazardous air pollutant into a storage vessel or the introduction of a wastewater stream or residual into a waste management unit, but not necessarily to complete capacity.

Fixed roof means a cover that is mounted on a waste management unit or storage vessel in a stationary manner and that does not move with fluctuations in liquid level.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Floating roof means a cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and waste management unit or storage vessel wall.

Flow indicator means a device which indicates whether gas flow is present in a line.

Group 1 process vent means a process vent for which the flow rate is greater than or equal to 0.005 standard cubic meter per minute, the organic HAP concentration is greater than or equal to 50 parts per million by volume, and the total resource effectiveness index value, calculated according to § 63.115, is less than or equal to 1.0.

Group 2 process vent means a process vent for which the flow rate is less than 0.005 standard cubic meter per minute, the organic HAP concentration is less than 50 parts per million by volume or the total resource effectiveness index value, calculated according to § 63.115, is greater than 1.0.

Group 1 storage vessel means a storage vessel that meets the criteria for design storage capacity and stored-liquid maximum true vapor pressure specified in Table 5 in § 63.119 for storage vessels at existing sources, and in Table 6 in § 63.119 for storage vessels at new sources.

Group 2 storage vessel means a storage vessel that does not meet the definition of a Group 1 storage vessel.

Group 1 transfer rack means a transfer rack that annually loads greater than or equal to 0.65 million liters of liquid products that contain organic hazardous air pollutants with a rack weighted average vapor pressure greater than or equal to 10.3 kilopascals.

Group 2 transfer rack means a transfer rack that does not meet the definition of Group 1 transfer rack.

Group 1 wastewater stream means a process wastewater stream from a process unit at an existing or new source with a total volatile organic hazardous air pollutant average concentration greater than or equal to 10,000 parts per million by weight of compounds listed in Table 9 of § 63.131 of this Subpart; or a process wastewater stream from a process unit at an existing or new source that has an average flow rate greater than or equal to 10 liters per minute and a total volatile organic hazardous air pollutant average concentration greater than or equal to 1,000 parts per million by weight. A process wastewater stream from a process unit at a new source that has an average flow rate greater than or equal to 0.02 liter per minute and an average concentration of 10 parts per million by weight or greater of any one of the compounds listed in Table 8 of § 63.131 of this Subpart is also considered a Group 1 wastewater stream. Average flow rate and total volatile organic hazardous air pollutant average concentration are determined for the point of generation of each process wastewater stream.

Group 2 wastewater stream means any process wastewater stream that does not meet the definition of a Group 1 wastewater stream.

Halogenated vent stream or *halogenated stream* means a vent stream from a process vent or transfer operation determined to have a total concentration of halogen atoms (by volume) contained in organic compounds of 200 parts per million by volume or greater determined by Method 18 of 40 CFR part 60, appendix A or other test or data validated by Method 301 of 40 CFR part 63, Appendix A, or by engineering assessment or process knowledge that no halogenated organic compounds are present. For example, 150 parts per million by volume of ethylene dichloride would contain 300 parts per million by volume of total halogen atoms.

Halogens and *hydrogen halides* means hydrogen chloride (HCl), chlorine (Cl_2), hydrogen bromide (HBr), bromine (Br_2), and hydrogen fluoride (HF).

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas.

Individual drain system means the system used to convey wastewater streams from a process unit, product or feed storage tank, or waste management unit to a waste management unit. The term includes all process drains and junction boxes, together with their associated sewer lines and other junction boxes, manholes, sumps, and lift stations, down to the receiving waste management unit. The individual drain system shall be designed to segregate the vapors within the system from other drain systems. A segregated stormwater sewer system, which is a drain and collection system designed and operated for the sole purpose of collecting rainfall-runoff at a facility, and which is segregated from all other individual drain systems, is excluded from this definition.

Intermittent vapor processing system means a vapor processing system that employs an intermediate vapor holder to accumulate total organic compound vapors collected from tank trucks or railcars, and treats the accumulated vapors only during automatically controlled cycles.

Internal floating roof means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel or waste management unit that has a permanently affixed roof.

Junction box means a manhole access point to a wastewater sewer system line or a lift station.

Liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel or waste management unit and the floating roof. The seal is mounted continuously around the circumference of the vessel or unit.

Loading cycle means the time period from the beginning of filling a tank truck or railcar until flow to the control device ceases, as measured by the flow indicator.

Loading rack means the sum of all loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves contiguous with, and that are part of, a single system used to fill tank trucks and railcars at a single geographic site. Loading equipment and operations that are physically separate (i.e., do not share common piping, valves, and other equipment) are considered to be separate loading racks.

Mass flow rate, as used in the wastewater provisions, means the mass of a constituent in a wastewater stream, determined by multiplying the average concentration of that constituent in the wastewater stream by the annual volumetric flow rate and density of the wastewater stream.

Maximum true vapor pressure means the equilibrium partial pressure exerted by the total organic HAP's in the stored liquid at the temperature equal to the highest calendar-month average of the liquid storage temperature for liquids stored above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Bulletin 2517, Evaporation Loss From External Floating Roof Tanks; or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–83; or

(4) Any other method approved by the Administrator.

Metallic shoe seal or *mechanical shoe seal* means a metal sheet that is held vertically against the wall of the storage vessel by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

Oil-water separator or *organic-water separator* means a waste management unit, generally a tank used to separate oil or organics from water. An oil-water or organic-water separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to additional treatment units such as an air flotation unit, clarifier, or biological treatment unit. Examples of an oil-water or organic-water separator include, but are not limited to, an American Petroleum Institute separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary.

Operating permit means a permit required by 40 CFR part 70.

Organic hazardous air pollutant or *organic HAP* means any of the chemicals listed in § 63.104 of subpart F.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds exiting a recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity.

Point of generation means the location where the wastewater stream exits the process unit component or product or feed storage tank prior to mixing with other wastewater streams or prior to handling or treatment in a piece of equipment which is not an integral part of the process unit. A piece of equipment is an integral part of the process unit if it is essential to the operation of the unit (i.e., removal of the equipment would result in the process unit being shut down). For example, a stripping column is part of the process unit if it produces the principle product stream and a wastewater which is discharged to the sewer. However, an identical stripper which treats a wastewater stream and recovers residual product would not be considered an integral part of the process unit. When quantifying parameters descriptive of the point of generation (e.g., average flow rate and average concentration) by measurement or sampling, the end results should be representative of the conditions at the point where the wastewater stream exits the process unit before it is treated or mixed with other wastewater streams, and prior to exposure to the atmosphere.

Primary fuel means the fuel that provides the principal heat input to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means a device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water.

Process unit has the same meaning as *chemical manufacturing process* as defined in § 63.101 of subpart F and means the equipment assembled and connected by pipes or ducts to manufacture as a product one or more of the chemicals listed in § 63.105 of subpart F of this part. A process unit includes all the equipment associated with the unit operations, storage and transport of feed material to the unit operations, and storage and transfer of products from the unit operations.

Process unit shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a process unit or part of a process unit consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not considered a process unit shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the process unit or part of the process unit of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown is not considered a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not considered process unit shutdowns.

Product accumulator vessel means any distillate receiver, bottoms receiver, surge control vessel, or product separator that is vented to the atmosphere either directly without first going through a pressure relief device or through a vacuum producing system.

Product tank, as used in the wastewater provisions, means a stationary unit that is designed to contain an accumulation of materials that are fed to or produced by a process unit, and is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support. This term has the same meaning as a product storage vessel.

Product tank drawdown means any material or mixture of materials discharged from a product tank for the purpose of removing water or other contaminants from the product tank.

Rack weighted average vapor pressure means the average vapor pressure of organic HAP's transferred at a transfer rack weighted by throughput.

Reactor process means a unit operation in which one or more chemicals or reactants, other than air, are combined or decomposed in such a way that their molecular structures are altered and one or more new organic compounds are formed.

Recovery device means an individual unit of equipment, such as an absorber, carbon adsorber, or condenser, capable of and used for the purpose of recovering chemicals for use, reuse, or sale.

Relief valve means a valve used only to release an unplanned, nonroutine discharge. A relief valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Reference control technology for process vents means a combustion device used to reduce organic HAP emissions by 98 percent, or to an outlet concentration of 20 parts per million by volume.

Reference control technology for storage vessels means an internal floating roof meeting the specifications of § 63.119(b) of this subpart, an external floating roof meeting the specifications of § 63.119(c) of this subpart, or a closed vent system to a control device achieving 95 percent reduction in organic HAP emissions. For purposes of emissions averaging, these three technologies are considered equivalent.

Reference control technology for transfer racks means a combustion device or recovery device used to reduce organic HAP emissions by 98 percent, or to an outlet concentration of 20 parts per million by volume; or a vapor balancing system.

Reference control technology for wastewater means the use of: (1) Fixed-roof and closed-vent systems on all wastewater tanks and oil-water separators managing wastewater, and covers and closed-vent systems on all surface impoundments, containers, individual drain systems and treatment processes managing wastewater; (2) a steam stripper meeting the specifications of § 63.138(f) of this subpart or any of the other alternative control measures specified in § 63.138(b), (c), and (d); and (3) a control device to reduce by 95 percent (or to an outlet concentration of 20 parts per million by volume for combustion devices) the organic HAP emissions in the vapor streams vented from wastewater tanks, oil-water separators, containers, surface impoundments, individual drain systems, and treatment processes (including the design steam stripper) managing wastewater.

Residual means any material containing organic hazardous air pollutant, that is removed from a wastewater stream by a waste management unit or treatment process that does not destroy organics (nondestructive unit). Examples of residuals from nondestructive wastewater management units are: the organic layer and bottom residue removed by a decanter or organic-water separator; and the overheads condensate stream from a steam stripper or air stripper. Residuals do not include the effluent wastewater stream that results from management or treatment of the influent wastewater stream to the waste management unit. Examples of materials which are not residuals are: The effluent wastewater stream exiting a decanter or organic-water separator after the organic layer has been removed; the bottoms from a steam stripper or air stripper; and sludges, ash, or other materials removed from the wastewater being treated by destructive devices such as biological treatment units and incinerators.

Secondary fuel means a fuel fired through a burner other than the primary fuel burner that provides supplementary heat in addition to the heat provided by the primary fuel.

Sewer line means a lateral, trunk line, branch line, or other conduit including, but not limited to, grates, trenches, etc., used to convey wastewater streams or residuals to a downstream waste management unit.

Single-seal system means a floating roof having one continuous seal that completely covers the space between the wall of the storage vessel and the edge of the floating roof. This seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Specific gravity monitoring device means a unit of equipment used to monitor specific gravity and having an accuracy of ±0.02 specific gravity units.

Steam jet ejector means a steam nozzle which discharges a high-velocity jet across a suction chamber that is connected to the equipment to be evacuated.

Surface impoundment means a waste management unit which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or waste containing free liquids. A surface impoundment is used for the purpose of treating, storing, or disposing of wastewater or residuals, and is not an injection well. Examples of surface impoundments are equalization, settling, and aeration pits, ponds, and lagoons.

Temperature monitoring device means a unit of equipment used to monitor temperature and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 degrees Celsius (°C), whichever is greater.

The 33/35 program means a voluntary pollution prevention initiative established and administered by EPA to encourage emissions reductions of 17 chemicals emitted in large volumes by industrial facilities. Companies commit to participating in the 33/35 program by sending a letter to the EPA 33/35 Program Office at TS–792A. The EPA Document Number 741–K–92–001 provides more information about the 33/35 program.

Total organic compounds or *TOC*, as used in the process vents provisions, means those compounds measured according to the procedures of Method 18 of 40 CFR part 60, appendix A.

Total volatile organic hazardous air pollutant means the sum of the volatile portions of all individually-speciated organic HAP's, as measured by proposed Method 305.

Total resource effectiveness index value or *TRE index value* means a measure of the supplemental total resource requirement per unit reduction of organic HAP associated with a process vent stream, based on vent stream flow rate, emission rate of organic HAP, net heating value, and corrosion properties (whether or not the vent stream contains halogenated compounds), as quantified by the equations given under § 63.115.

Treatment process means a specific technique that removes or destroys the organics in a wastewater or residual stream such as a steam stripping unit, thin-film evaporation unit, waste incinerator, biological treatment unit, or any other process applied to wastewater streams or residuals to comply with § 63.138 of this subpart.

Vapor balancing system means a piping system that is designed to collect organic HAP vapors displaced from tank trucks or railcars during loading, and to route the collected organic HAP vapors to the storage vessel from which the liquid being loaded originated.

Vapor collection system, as used in the transfer provisions, means the equipment used to collect and transport organic HAP vapors displaced during the loading of tank trucks or railcars. This does not include the vapor collection system that is part of any tank truck or railcar vapor collection manifold system.

Vapor-mounted seal means a continuous seal that completely covers the annular space between the wall of the storage vessel or waste management unit and the edge of the floating roof and is mounted such that there is a vapor space between the stored liquid and the bottom of the seal.

Vent stream, as used in the process vent provisions, means any gas stream discharged directly from an air oxidation process, reactor process, or distillation operation to the atmosphere or indirectly to the atmosphere after diversion through other process equipment. The vent stream excludes relief valve discharges and equipment leaks, but includes vents from product accumulator vessels.

Volatile organic or *VO* refers to the portion of organic compounds (including both HAP and non-HAP organic compounds) in a wastewater stream that is measured by Method 25D, as found in 40 CFR part 60, appendix A.

Volatile organic hazardous air pollutant or *VOHAP* means the volatile portion of an individually-speciated organic HAP in a wastewater stream or a residual that is measured by proposed Method 305.

Waste management unit means any component, piece of equipment, structure, or transport mechanism used in conveying, storing, treating, or disposing of any waste, including a wastewater stream or a residual. Examples of waste management units include wastewater tanks, air flotation units, surface impoundments, containers, oil-water or organic-water separators, individual drain systems, biological treatment units, waste incinerators, and organic removal devices such as decanters, steam and air stripper units, and thin-film evaporation units.

Wastewater stream means any organic HAP-containing (see subpart F) liquid or material separated from the liquid that results from either direct or indirect contact of water with organic compounds. The characteristics of a wastewater stream (e.g., flow rate, VOHAP concentration) are determined for the point of generation. Examples of a wastewater stream include, but are not limited to, process wastewater, product or feed tank drawdown, cooling tower blowdown, steam trap condensate, reflux, and fluids drained into and material recovered from waste management units. This definition is illustrated in Figure 2 of § 63.131 of this subpart.

Wastewater tank means a stationary waste management unit that is designed to contain an accumulation of wastewater or residuals and is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support. Wastewater tanks used for flow equalization are included in this definition.

Water seal controls means a seal pot, p-leg trap, or other type of trap filled with water that creates a water barrier between the sewer line and the atmosphere.

§ 63.112 Emission limits.

(a) The owner or operator of an existing source subject to the requirements of this subpart shall control emissions of organic HAP's to the level specified by the following equation:

$$E_A = 0.02\Sigma EPV_1 + \Sigma EPV_2 + 0.05\Sigma ES_1 + \Sigma ES_2 + 0.02\Sigma ETR_1 + \Sigma ETR_2 + \Sigma EWW_{1C} + \Sigma EWW_2$$

where:

E_A=Emission rate, in megagrams per year, allowed for the source.

$0.02\Sigma EPV_1$=Sum of the residual emissions from all Group 1 process vents, as defined in § 63.111.

ΣEPV_2=Sum of the emissions from all Group 2 process vents.

$0.05\Sigma ES_1$=Sum of the residual emissions from all Group 1 storage vessels, as defined in § 63.111.

ΣES_2=Sum of the emissions from all Group 2 storage vessels.

$0.02\Sigma ETR_1$=Sum of the residual emissions from all Group 1 transfer racks, as defined in § 63.111.

ΣETR_2=Sum of the emissions from all Group 2 transfer racks.

ΣEWW_{1C}=Sum of the residual emissions from all Group 1 wastewater streams, as defined in § 63.111. This term is calculated for each Group 1 stream according to the equation for EWW_{ic} in § 63.150(f)(5)(i).

ΣEWW_2=Sum of emissions from all Group 2 wastewater streams.

(b) The owner or operator of a new source subject to the requirements of this subpart shall control emissions of organic HAP's to the levels specified in the equation in paragraph (a) of this section.

(c) Compliance with the emission standard in paragraphs (a) or (b) shall be demonstrated in one or both of the following two ways:

(1) The owner or operator can comply by applying reference control technologies that achieve the required level of control at Group 1 process vents, storage vessels, transfer racks, and wastewater streams and associated treatment residuals. For example, the owner or operator could apply a combustion device achieving 98 percent emission reduction to Group 1 process vents.

(i) The owner or operator using this compliance approach for some or all Group 1 emission points must comply for each emission point with the process vent provisions in §§ 63.113 through 63.118, the storage vessel provisions in §§ 63.119 through 63.123, the transfer operation provisions in §§ 63.126 through 63.130, and the wastewater provisions in §§ 63.131 to 63.147 of this Subpart.

(ii) The owner or operator of a Group 1 wastewater stream is not required to apply the reference control technology if he complies with the provisions in § 63.132(d)(4).

(iii) The owner or operator using this compliance approach shall also comply with the requirements of § 63.151 and § 63.152, as applicable.

(2) The owner or operator may elect to control different groups of emission points within the source to different levels than specified under §§ 63.113 through 63.147 as long as the overall emissions for the source do not exceed the emission level specified in § 63.112.

(i) Owners or operators using this emissions averaging compliance approach must calculate their emission debits and credits for those emission points involved in the emission average as specified in § 63.150 and comply with the requirements of § 63.151 and § 63.152, as applicable.

(ii) Emission debits and credits must be calculated separately for new and existing sources. New sources shall not be included in the same emission average as existing sources. The determination of whether an emission point is part of a new or existing source shall be made according to the provisions of subparts A[1] and F of this part.

§ 63.113 Process vent provisions.

(a) The owner or operator of a Group 1 process vent as defined in subpart F and in this subpart shall comply with the requirements of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(1) Reduce emissions of organic HAP using a flare.

(i) The flare shall comply with the requirements of § 60.18.

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[1] The EPA will propose subpart A in the future.

(ii) Halogenated vent streams, as defined in § 63.111, shall not be vented to a flare.

(2) Reduce emissions of organic HAP by 98 weight percent or to a concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent. Compliance can be determined by measuring either organic HAP or TOC using the procedures in § 63.116.

(3) Achieve and maintain a TRE index value greater than 1.0 at the outlet of the final recovery device, or prior to release of the vent stream to the atmosphere if no recovery device is present. In this case, the vent shall comply with the provisions for a Group 2 process vent specified in either paragraph (d) or (e) of this section, whichever is applicable.

(b) If a boiler or process heater is used to comply with the percent reduction requirement or concentration limit specified in paragraph (a)(2) of this section, then the vent stream shall be introduced into the flame zone of such a device.

(c) If a combustion device is used to comply with paragraph (a)(2) of this section for a halogenated vent stream, then the vent stream shall be ducted from the combustion device to a scrubber before it is discharged to the atmosphere. The scrubber shall reduce overall emissions of hydrogen halides and halogens as defined in § 63.111 by 99 percent or shall reduce the outlet concentration of each individual hydrogen halide or halogen to 0.5 milligram per dry standard cubic meter or less, whichever is less stringent.

(d) The owner or operator of a Group 2 process vent having a flow rate greater than or equal to 0.005 standard cubic meter per minute, a HAP concentration greater than or equal to 50 parts per million by volume, and a TRE index value greater than 1.0 but less than or equal to 4.0 shall maintain a TRE index value greater than 1.0 and shall comply with the monitoring of recovery device parameters in § 63.114 (b) or (c), the TRE index calculations of § 63.115, and the applicable reporting and recordkeeping provisions of § 63.117 and § 63.118. Such owner or operator is not subject to any other provisions of §§ 63.114 through 63.118.

(e) The owner or operator of a Group 2 process vent with a TRE index greater than 4.0 shall maintain a TRE index value greater than 4.0, comply with the provisions for calculation of TRE index in § 63.115 and the reporting and recordkeeping provisions in § 63.117(b), § 63.118(c), and § 63.118(h), and is not subject to monitoring or any other provisions of §§ 63.114 through 63.118.

(f) The owner or operator of a Group 2 process vent with a flow rate less than 0.005 standard cubic meter per minute shall maintain a flow rate less than 0.005 standard cubic meter per minute; comply with the Group determination procedures in § 63.115 (a), (b), and (e); and the reporting and recordkeeping requirements in § 63.117(c), § 63.118(d), and § 63.118(i); and is not subject to monitoring or any other provisions of §§ 63.114 through 63.118.

(g) The owner or operator of a Group 2 process vent with a concentration less than 50 parts per million by volume shall maintain a concentration less than 50 parts per million by volume; comply with the Group determination procedures in § 63.115 (a), (c), and (e); the reporting and recordkeeping requirements in § 63.117(d), § 63.118(e), and § 63.118(j); and is not subject to monitoring or any other provisions of §§ 63.114 through 63.118.

(h) The owner or operator of a process vent complying with paragraph (a)(1) or (a)(2) of this section is not required to perform the group determination described in § 63.115.

§ 63.114 Process vent provisions—monitoring requirements.

(a) Each owner or operator of a process vent that uses a combustion device to comply with the requirements in § 63.113 (a)(1) or (a)(2) shall install monitoring equipment specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section, depending on the type of combustion device used. All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturers specifications.

(1) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) Where a flare is used, the following monitoring equipment is required: A heat-sensing device, such as an ultra-violet beam sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame.

(3) Where a boiler or process heater of less than 44 megawatts design heat input capacity is used, the following monitoring equipment is required: a temperature monitoring device in the firebox equipped with a continuous recorder. Any boiler or process heater in which all vent streams are introduced with primary fuel is exempt from this requirement.

(4) Where a scrubber is used with an incinerator, boiler, or process heater in the case of halogenated vent streams, the following monitoring equipment is required for the scrubber.

(i) A pH monitoring device equipped with a continuous recorder shall be installed to monitor the pH of the scrubber effluent.

(ii) Flow meters equipped with continuous recorders shall be located at the scrubber influent for liquid flow and the scrubber inlet for gas stream flow.

(b) Each owner or operator of a process vent with a TRE index value greater than 1.0 as specified under § 63.113(a)(3) or § 63.113(d), that uses one or more product recovery devices shall install either an organic monitoring device equipped with a continuous recorder or the monitoring equipment specified in paragraph (b)(1), (b)(2), or (b)(3) of this section, depending on the type of recovery device used. All monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications. Monitoring is not required for process vents with TRE index values greater than 4.0 as specified in § 63.113(e).

(1) Where an absorber is the final recovery device in the recovery system, a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each equipped with a continuous recorder shall be used;

(2) Where a condenser is the final recovery device in the recovery system, a condenser exit (product side) temperature monitoring device equipped with a continuous recorder shall be used;

(3) Where a carbon adsorber is the final recovery device in the recovery system, an integrating regeneration stream flow monitoring device having an accuracy of ± 10 percent, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle.

(c) An owner or operator of a process vent may request approval to monitor parameters other than those listed in paragraph (a) or (b) of this section. The request shall be submitted according to the procedures specified in § 63.151(f) or § 63.152(e) of this subpart. Approval shall be requested if the owner or operator:

(1) Uses a control device other than an incinerator, boiler, process heater, or flare; or

(2) Maintains a TRE greater than 1.0 but less than or equal to 4.0 without a recovery device or with a recovery device other than the recovery devices listed in paragraphs (a) and (b) of this section; or

(3) Uses one of the control or recovery devices listed in paragraphs (a) and (b) of this section, but seeks to monitor a parameter other than those specified in paragraphs (a) and (b).

(d) The owner or operator of a process vent using a vent system that contains bypass lines that could divert a vent stream away from the control device used to comply with § 63.113 (a)(1) or (a)(2) shall comply with paragraph (d)(1) or (d)(2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, and equipment subject to § 63.167 are not subject to this paragraph.

(1) Install, calibrate, maintain, and operate a flow indicator that provides a record of vent stream flow at least once every 15 minutes. The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere; or

(2) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.

(e) The owner or operator shall establish a range that indicates proper operation of the control or recovery device for each parameter monitored under paragraphs (a), (b), and (c) of this section. In order to establish the range, the information required in § 63.152(b) of this subpart shall be submitted in the Notification of Compliance Status or the operating permit application.

(Approved by the Office of Management and Budget under Control Number ________.)

§ 63.115 Process vent provisions—methods and procedures for process vent group determination.

(a) For purposes of determining process vent stream flow rate, total organic HAP or TOC concentration or TRE index value, as specified under paragraph (b), (c), or (d) of this section, the sampling site shall be after the last product recovery device (if any recovery devices are present) but prior to the inlet of any control device that is present, prior to any dilution of the process vent stream, and prior to release to the atmosphere.

(1) Method 1 or 1A of part 60, appendix A, as appropriate, shall be used for selection of the sampling site.

(2) No traverse site selection method is needed for vents smaller than 0.10 meter in diameter.

(b) To demonstrate that a process vent stream flow rate is less than 0.005 standard cubic meter per minute in accordance with the Group 2 process vent definition of this subpart, the owner or operator shall measure flow rate by the following procedures:

(1) The sampling site shall be selected as specified in paragraph (a) of this section.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of part 60, appendix A, as appropriate.

(c) Each owner or operator seeking to demonstrate that a process vent stream has an organic HAP concentration below 50 parts per million by volume in accordance with the Group 2 process vent definition of this subpart shall measure either total organic HAP or TOC concentration using the following procedures:

(1) The sampling site shall be selected as specified in paragraph (a) of this section.

(2) Method 18 or Method 25A of part 60, appendix A shall be used to measure concentration; alternatively, any other method or data that has been validated according to the protocol in Method 301 of part 63, appendix A may be used.

(3) Where Method 18 is used, the following procedures shall be used to calculate parts per million by volume concentration:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The concentration of either TOC (minus methane and ethane) or organic HAP shall be calculated according to paragraph (c)(3)(ii)(A) or (c)(3)(ii)(B) of this section as applicable.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \frac{\sum_{i=1}^{x} \left(\sum_{j=1}^{n} C_{ji} \right)}{x}$$

where:

C_{TOC}=Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

C_{ji}=Concentration of sample component "j" of the sample "i", dry basis, parts per million by volume.

n=Number of components in the sample.

x=Number of samples in the sample run.

(B) The total organic HAP concentration (C^{HAP}) shall be computed according to the equation in paragraph (c)(3)(ii)(A) of this section except that only the organic HAP species shall be summed. The list of organic HAP's is provided in § 63.105 of subpart F of this part.

(iii) The concentration of TOC or total organic HAP shall be corrected to 3 percent oxygen.

(A) The emission rate correction factor, integrated sampling and analysis procedures of Method 3B of part 60, appendix A shall be used to determine the oxygen concentration ($\%0_{2d}$). The samples shall be taken during the same time that the TOC or total organic HAP samples are taken.

(B) The concentration corrected to 3 percent oxygen (C_c) shall be computed using the following equation:

$$C_c = C_m \left(\frac{17.9}{20.9 - \%O_{2d}} \right)$$

where:

C_c=Concentration of TOC or total organic HAP corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m=Concentration measured (TOC or C_{HAP} as applicable), parts per million by volume.

$\%0_{2d}$=Concentration of oxygen, dry basis, percent by volume.

(4) Where Method 25A is used, the following procedures shall be used to calculate parts per million by volume TOC concentration:

(i) Method 25A shall be used only if a single organic HAP compound is greater than 50 percent of total organic HAP, by volume, in the process vent stream.

(ii) The process vent stream composition may be determined by either process knowledge, test data collected using an appropriate EPA Method or a method or data validated according to the protocol in Method 301 of part 63, appendix A. Examples of information that could constitute process knowledge include calculations based on material balances, process stoichiometry, or previous test results provided the results are still relevant to the current process vent stream conditions.

(iii) The organic HAP used as the calibration gas for Method 25A shall be the single organic HAP compound present at greater than 50 percent of the total organic HAP by volume.

(iv) The span value for Method 25A shall be 50 parts per million by volume.

(v) Use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(vi) The concentration of TOC shall be corrected to 3 percent oxygen using the procedures and equation in (c)(3)(iii) of this section.

(vii) The owner or operator shall demonstrate that the concentration of TOC including methane and ethane measured by Method 25A, corrected to 3 percent oxygen is below 25 parts per million by volume to be considered a Group 2 vent with an organic HAP concentration below 50 parts per million by volume and to qualify for the low concentration exclusion in § 63.113(g).

(d) To determine the TRE index value, the owner or operator shall conduct a TRE determination and calculate the TRE index value according to the procedures in paragraph (d)(1) or (d)(2) of this section and the TRE equation in paragraph (d)(3) of this section.

(1) Engineering assessment may be used to determine process vent stream flow rate, net heating value, TOC emission rate, and total organic HAP emission rate for the representative operating condition expected to yield the lowest TRE index value.

(i) If the TRE value calculated using such engineering assessment and the TRE equation in paragraph (d)(3) of this section is greater than 4.0, then the owner or operator is not required to perform the measurements specified in paragraph (d)(2) of this section.

(ii) If the TRE value calculated using such engineering assessment and the TRE equation in paragraph (d)(3) of this section is less than or equal to 4.0, then the owner or operator is required to perform the measurements specified in paragraph (d)(2) of this section for group determination or consider the process vent a Group 1 vent and comply with the emission reduction specified in § 63.113(a).

(iii) Engineering assessment includes, but is not limited to, the following:

(A) Previous test results provided the tests are representative of current operating practices at the process unit.

(B) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(C) Maximum flow rate, TOC emission rate, organic HAP emission rate, or net heating value limit specified or implied within a permit limit applicable to the process vent.

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances based on process stoichiometry to estimate maximum organic HAP concentrations,

(*2*) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities,

(*3*) Estimation of TOC or organic HAP concentrations based on saturation conditions,

(*4*) Estimation of maximum expected net heating value based on the stream concentration of each organic compound or, alternatively, as if all TOC in the stream were the compound with the highest heating value.

(E) All data, assumptions, and procedures used in the engineering assessment shall be documented.

(2) Except as provided in paragraph (d)(1) of this section, process vent stream flow rate, net heating value, TOC emission rate, and total organic HAP emission rate shall be measured and calculated according to the procedures in paragraphs (d)(2)(i) through (d)(2)(v) of this section and used as input to the TRE index value calculation in paragraph (d)(3) of this section.

(i) The vent stream volumetric flow rate (Qs), in standard cubic meters per minute at 20 °C, shall be determined using Method 2, 2A, 2C, or 2D of part 60, appendix A, as appropriate. If the vent stream tested passes through a final steam jet ejector and is not condensed, the stream volumetric flow shall be corrected to 2.3 percent moisture.

(ii) The molar composition of the process vent stream, which is used to calculate net heating value, shall be determined using the following methods:

(A) Method 18 of part 60, appendix A to measure the concentration of each organic compound.

(B) American Society for Testing and Materials D1946–77 to measure the concentration of carbon monoxide and hydrogen.

(C) Method 4 to measure the content of water vapor.

(iii) The net heating value of the vent stream shall be calculated using the following equation:

$$H_T = K_1 \left(\sum_{j=1}^{n} C_j H_j \right) (1 - B_{ws})$$

where:

H_T=Net heating value of the sample, megaJoule per standard cubic meter, where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 millimeters of mercury, but the standard temperature for determining the volume corresponding to one mole is 20 °C, as in the definition of Q_s (vent stream flow rate).

K_1=Constant, 1.740×10^{-7} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (megaJoule per kilocalorie), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

B_{ws}=Water vapor content of the vent stream, proportion by volume; except that if the vent stream passes through a final steam jet and is not condensed, it shall be assumed that B_{ws}=0.023 in order to correct to 2.3 percent moisture.

C_j=Concentration on a dry basis of compound j in parts per million, as measured for all organic compounds by Method 18 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials D1946–77 as indicated in paragraph (d)(2)(ii) of this section.

H_j=Net heat of combustion of compound j, kilocalorie per gram-mole, based on combustion at 25 °C and 760 millimeters mercury. The heats of combustion of vent stream components shall be determined using American Society for Testing and Materials D2382–76 if published values are not available or cannot be calculated.

(iv) The emission rate of TOC (minus methane and ethane) (E_{TOC}) and the emission rate of total organic HAP (E_{HAP}) in the vent stream shall both be calculated using the following equation:

$$E = K_2 \left[\sum_{j=1}^{n} C_j M_j \right] Q_s$$

where:

E=Emission rate of TOC (minus methane and ethane) or emission rate of total organic HAP in the sample, kilograms per hour.

K_2= Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minutes/hour), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

C_j=Concentration on a dry basis of organic compound j in parts per million as measured by Method 18 as indicated in paragraph (d)(2)(ii) of this section. If the TOC emission rate is being calculated, C_j includes all organic compounds measured minus methane and ethane; if the total organic HAP emission rate is being calculated, only organic HAP compounds listed in § 63.104 of subpart F are included.

M_j=Molecular weight of organic compound j, gram/gram-mole.

Q_s=Vent stream flow rate (dry standard cubic meter per minute) at a temperature of 20 °C.

(v) The total vent stream concentration of total halogen atoms (by volume) contained in organic compounds (parts per million by volume, by compound) shall be summed from the individual halogen atoms in each organic HAP compound based on the molecular formula of the compound and the concentrations of compounds containing halogens based on the following procedures:

(A) Process knowledge that no halogen or hydrogen halides are present in the process, or

(B) Sum of halogen atoms from organic compounds containing halogens measured by Method 18, or

(3) The owner or operator shall calculate the TRE index value of the vent stream using the equations and procedures in this paragraph.

(i) The equation for calculating the TRE index for a vent stream controlled by a flare or incinerator is as follows:

$$TRE = \frac{1}{E_{HAP}} [a + b(Q_s) + c(H_T) + d(E_{TOC})]$$

where:

TRE=TRE index value.

E_{HAP}=Hourly emission rate of total organic HAP (kilograms per hour) as calculated in paragraph (d)(1) or (d)(2)(iv) of this section.

Q_s=Vent stream flow rate (standard cubic meters per minute) at a standard temperature of 20 °C, as calculated in paragraph (d)(1) or (d)(2)(i) of this section.

H_T=Vent stream net heating value (megaJoules per standard cubic meter) as calculated in paragraph (d)(1) or (d)(2)(iii) of this section.

E_{TOC}=Hourly emission rate of TOC (minus methane and ethane) as calculated in paragraph (d)(1) or (d)(2)(iv) of this section.

a,b,c,d=Coefficients presented in Table 1, selected in accordance with paragraphs (d)(3)(ii) and (iii) of this section.

(ii) The owner or operator of a nonhalogenated vent stream shall calculate the TRE index value based on the use of a flare, a thermal incinerator with 0 percent heat recovery, and a thermal incinerator with 70 percent heat recovery and shall select the lowest TRE index value. The owner or operator shall use the applicable coefficients in Table 1 of this subpart for nonhalogenated vent streams located within existing sources and the applicable coefficients in Table 2 of this subpart for nonhalogenated vent streams located within new sources.

(iii) The owner or operator of a halogenated vent stream shall calculate the TRE index value based on the use of a thermal incinerator with 0 percent heat recovery, and a scrubber. The owner or operator shall use the applicable coefficients in Table 1 of this subpart for halogenated vent streams located within existing sources and the applicable coefficients in Table 2 of this subpart for halogenated vent streams located within new sources.

TABLE 1.—COEFFICIENTS FOR TOTAL RESOURCE EFFECTIVENESS FOR EXISTING SOURCE NONHALOGENATED AND HALOGENATED VENT STREAMS

Type of stream	Control device basis	Values of coefficients			
		a	b	c	d
Nonhalogenated	Flare	2.902	5.490×10^{-1}	-1.153×10^{-2}	-1.100×10^{-3}
	Thermal Incinerator 0 Percent Heat Recovery	2.238	9.400×10^{-2}	4.765×10^{-2}	-1.739×10^{-3}
	Thermal Incinerator 70 Percent Heat Recovery	3.778	1.775×10^{-2}	1.950×10^{-2}	7.185×10^{-2}
Halogenated	Thermal Incinerator and Scrubber	5.992	7.800×10^{-2}	-2.653×10^{-3}	1.455×10^{-3}

TABLE 2.—COEFFICIENTS FOR TOTAL RESOURCE EFFECTIVENESS FOR NEW SOURCE NONHALOGENATED AND HALOGENATED VENT STREAMS

Type of stream	Control device basis	Values of coefficients			
		a	b	c	d
Nonhalogenated	Flare	0.5276	0.0998	-2.096×10^{-3}	-2.000×10^{-4}
	Thermal Incinerator 0 Percent Heat Recovery	0.4068	0.0171	8.664×10^{-3}	-3.162×10^{-4}
	Thermal Incinerator 70 Percent Heat Recovery	0.6868	3.209×10^{-3}	3.546×10^{-3}	1.306×10^{-2}
Halogenated	Thermal Incinerator and Scrubber	1.0895	1.417×10^{-2}	-4.822×10^{-4}	2.645×10^{-4}

(e) The owner or operator of a Group 2 process vent shall recalculate the TRE index value, flow, or organic HAP concentration for each process vent, as necessary to determine whether the vent is Group 1 or Group 2, whenever process changes are made. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph, process changes do not include: Process upsets; unintentional, temporary process changes; and changes that are within the range on which the original TRE calculation was based.

(1) The TRE index value, flow rate, or organic HAP concentration shall be recalculated based on measurements of vent stream flow rate, TOC, and organic HAP concentrations, and heating values as specified in § 63.115 (a), (b), (c), and (d), as applicable, or on best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in paragraph (d)(1) of this section.

(2) Where the recalculated TRE index value is less than or equal to 1.0, or less than or equal to 4.0 but greater than 1.0, the recalculated flow rate is greater than or equal to 0.005 standard cubic meter per minute, or the recalculated concentration is greater than or equal to 50 parts per million by volume, the owner or operator shall submit a report as specified in § 63.118 (g), (h), (i), or (j) and shall comply with the appropriate provisions in § 63.113 by the dates specified in subpart F.

§ 63.116 Process vent provisions—performance test methods and procedures to determine compliance.

(a) When a flare is used to comply with § 63.113(a)(1), the owner or operator shall comply with the flare provisions in § 63.11.

(1) The compliance determination required by § 63.6(g) of subpart A of this part[2] shall be conducted using Method 22 of part 60, appendix A, to determine visible emissions.

(2) An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration when a flare is used.

(b) An owner or operator is not required to conduct a performance test when any control device specified in paragraphs (b)(1) through (b)(3) of this section is used.

(1) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(2) A boiler or process heater into which the process vent stream is introduced with the primary fuel.

(3) A boiler or process heater burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266 subpart H, or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266 subpart H.

(c) Except as provided in paragraphs (a) and (b) of this section, an owner or operator using a control device to comply with the organic HAP concentration limit or percent reduction efficiency requirements in § 63.113(a)(2) shall conduct a performance test using the procedures in paragraphs (c)(1) through (c)(4) of this section. The organic HAP concentration and percent reduction may be measured as either total organic HAP or as TOC minus methane and ethane according to the procedures specified.

(1) Method 1 or 1A of part 60, appendix A, as appropriate, shall be used for selection of the sampling sites.

(i) For determination of compliance with the 98 percent reduction of total organic HAP requirement of § 63.113(a)(2), sampling sites shall be located at the inlet of the control device as specified in paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) of this section, and at the outlet of the control device.

(A) The control device inlet sampling site shall be located after the final product recovery device.

(B) If a process vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic HAP or TOC (minus methane and ethane) concentrations in all process vent streams and primary and secondary fuels introduced into the boiler or process heater.

(ii) For determination of compliance with the 20 parts per million by volume total organic HAP limit in § 63.113(a)(2), the sampling site shall be located at the outlet of the control device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of part 60, appendix A, as appropriate.

(3) To determine compliance with the 20 parts per million by volume organic HAP limit in § 63.113(a)(2), the owner or operator shall use Method 18 of part 60, appendix A to measure either TOC minus methane and ethane or total organic HAP. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of part 63, appendix A, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The concentration of either TOC (minus methane or ethane) or total organic HAP shall be calculated according to paragraph (c)(3)(ii)(A) or (c)(3)(ii)(B) of this section.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x}$$

where:

C_{TOC}=Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

C_{ji}=Concentration of sample components "j" of sample "i", dry basis, parts per million by volume.

n=Number of components in the sample.

x=Number of samples in the sample run.

(B) The total organic HAP concentration (C_{HAP}) shall be computed according to the equation in paragraph (c)(3)(ii)(A) of this section except that only the organic HAP species shall be summed. The list of organic HAP's is provided in § 63.104 of subpart F of this part.

(iii) The concentration of TOC or total organic HAP shall be corrected to 3 percent oxygen.

(A) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B of part 60, appendix A shall be used to determine the oxygen concentration (%O_{2d}). The samples shall be taken during the same time that the TOC (minus methane or ethane) or total organic HAP samples are taken.

(B) The concentration corrected to 3 percent oxygen (C_c) shall be computed using either of the following equations:

$$C_c = C_m \left(\frac{17.9}{20.9 - \%O_{2d}}\right)$$

where:

C_c=Concentration of TOC or organic HAP corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m=Concentration of TOC (minus methane and ethane) or organic HAP, dry basis, parts per million by volume.

%O_{2d}=Concentration of oxygen, dry basis, percent by volume.

(4) To determine compliance with the 98 percent reduction requirement of § 63.113(a)(2), the owner or operator shall use Method 18 of part 60,

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[2] The EPA will propose subpart A in the future.

appendix A; alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of part 63, appendix A, may be used. The following procedures shall be used to calculate percent reduction efficiency:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time such as 15 minute intervals during the run.

(ii) The mass rate of either TOC (minus methane and ethane) or total organic HAP (E_i, E_o) shall be computed.

(A) The following equations shall be used:

$$E_i = K_2 \left(\sum_{j=1}^{n} C_{ij} M_{ij} \right) Q_i$$

$$E_o = K_2 \left(\sum_{j=1}^{n} C_{oj} M_{oj} \right) Q_o$$

where:

C_{ij}, C_{oj}=Concentration of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o=Mass rate of TOC (minus methane and ethane) or total organic HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj}=Molecular weight of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o=Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2=Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

(B) Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by Method 18 are summed using the equation in paragraph (c)(4)(ii)(A) of this section.

(C) Where the mass rate of total organic HAP is being calculated, only the organic HAP species shall be summed using the equation in paragraph (c)(4)(ii)(A) of this section. The list of organic HAP's is provided in § 63.104 of subpart F of this part.

(iii) The percent reduction in TOC (minus methane and ethane) or total organic HAP shall be calculated as follows:

$$R = \frac{E_i - E_o}{E_i} (100)$$

where:

R=Control efficiency of control device, percent.

E_i=Mass rate of TOC (minus methane and ethane) or total organic HAP at the inlet to the control device as calculated under paragraph (c)(4)(ii) of this section, kilograms TOC per hour or kilograms organic HAP per hour.

E_o=Mass rate of TOC (minus methane and ethane) or total organic HAP at the outlet of the control device, as calculated under paragraph (c)(4)(ii) of this section, kilograms TOC per hour or kilograms organic HAP per hour.

(iv) If the process vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total organic HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total organic HAP exiting the combustion device, respectively.

(d) An owner or operator using a combustion device followed by a scrubber to control halogenated process vent streams in compliance with § 63.113(c) shall conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens.

(1) For an owner or operator determining compliance with the 99 percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber. For an owner or operator determining compliance with the 0.5 milligram per dry standard cubic meter outlet emission limit for each hydrogen halide and halogen, the sampling site shall be located at the outlet of the scrubber prior to any releases to the atmosphere.

(2) Except as provided in paragraph (d)(5) of this section, Method 26 or Method 26A of part 60, appendix A, shall be used to determine the concentration, in milligrams per dry standard cubic meter, corrected to a 3 percent oxygen basis, of hydrogen halides and halogens that may be present in the vent stream.

(3) To determine compliance with the 99 percent removal efficiency, the mass emissions for any hydrogen halides and halogens present at the scrubber inlet shall be summed together. The mass emissions of the compounds present at the scrubber outlet shall be summed together. Percent reduction shall be determined by comparison of the summed inlet and outlet measurements.

(4) To demonstrate compliance with the 0.5 milligram per dry standard cubic meter emission limit, the test results must show that the concentration of each individual compound measured at the scrubber outlet is below 0.5 milligram per dry standard cubic meter or is below detectable levels.

(5) The owner or operator may use any other method to demonstrate compliance if the method or data have been validated according to the applicable procedures of Method 301 of part 63, appendix A.

§ 63.117 Process vents provisions—reporting and recordkeeping requirements for group and TRE determinations and performance tests.

(a) Each owner or operator subject to the control provisions for Group 1 vent streams in § 63.113(a) or the provisions for Group 2 vent streams with a TRE index value greater than 1.0 but less than or equal to 4.0 in § 63.113(d) shall:

(1) Keep an up-to-date, readily accessible record of the data specified in paragraphs (a)(4) through (a)(8) of this section, as applicable, and

(2) Include the data in paragraphs (a)(4) through (a)(8) of this section in the Notification of Compliance Status report as specified in § 63.152 of this subpart.

(3) If any subsequent TRE determinations or performance tests are conducted after the Notification of Compliance Status has been submitted, report the data in paragraphs (a)(4) through (a)(8) of this section in the next Periodic Report as specified in § 63.152 of this subpart.

(4) Record and report the following when using a combustion device to achieve a 98 weight percent reduction in organic HAP or an organic HAP concentration of 20 parts per million by volume, as specified in § 63.113(a)(2):

(i) The parameter monitoring results for incinerators, catalytic incinerators, boilers or process heaters specified in Table 3 of this subpart, and averaged over the same time period of the performance testing.

TABLE 3.—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOC EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME

Control device	Parameters to be monitored[a]	Recordkeeping and reporting requirements for monitored parameters
Thermal Incinerator	Firebox temperature[b] [63.114(a)(1)(i)]	1. Continuous records.[c] 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS.[d] 3. Record the daily average firebox temperature for each operating day.[e] 4. Report all operating days when the daily average firebox temperature is outside the range established in the NCS or operating permit—PR.[f]
Catalytic Incinerator	Temperature upstream and downstream of the catalyst bed [63.114(a)(1)(ii)].	1. Continuous records. 2. Record and report the upstream and downstream temperatures and the temperature difference across the catalyst bed averaged over the full period of the performance test—NCS. 3. Record the daily average upstream temperature and temperature difference across catalyst bed for each operating day.[e] 4. Report all operating days when the daily average upstream temperature is outside the range established in the NCS or operating permit—PR. 5. Report all operating days when the daily average temperature difference across the catalyst bed is outside the range established in the NCS or operating permit—PR.
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and Vent Stream is *not* the primary fuel.	Firebox temperature[b] [63.114(a)(3)]	1. Continuous records. 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS. 3. Record the daily average firebox temperature for each operating day.[e] 4. Report all operating days when the daily average firebox temperature is outside the range established in the NCS or operating permit—PR.
Flare	Presence of a flame at the pilot light [63.114(a)(2)].	1. Continuous records. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS. 3. Record and report the duration of all periods when the pilot flame is absent—PR.
Scrubber for Halogenated Vent Streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent [63.114(a)(4)(i)], and.	1. Continuous records. 2. Record and report the pH of the scrubber effluent averaged over the full period of the performance test—NCS. 3. Record the daily average pH of the scrubber effluent for each operating day.[e] 4. Report all operating days when the daily average pH of the scrubber effluent is outside the range established in the NCS operating permit—PR.
	Scrubber liquid and gas flow rates [63.1149(a)(4)(ii)].	1. Continuous records. 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS. 3. Record the daily average scrubber liquid/gas ratio for each operating day.[e] 4. Report all operating days when the daily average scrubber liquid/gas ratio is outside the range established in the NCS or operating permit—PR.
All Control Devices	Presence of flow diverted to the atmosphere from the control device [63.114(d)(1)] *or.*	1. Continuous records. 2. Record and report all periods when the vent stream is diverted through a bypass line—PR.
	Monthly inspections of sealed valves [63.114(d)(2)].	1. Records that monthly inspections were performed. 2. Record and report all monthly inspections that show the valves are not closed or the seal has been changed—PR.

[a] Regulatory citations are listed in brackets.
[b] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[c] "Continuous records" is defined in § 63.111 of this Subpart.
[d] NCS=Notification of Compliance Status described in § 63.152 of this Subpart.
[e] The daily average is the average of all recorded parameter values for the operating day. If all recorded values during an operating day are within the range established in the NCS or operating permit, a statement to this effect can be recorded instead of the daily average.
[f] PR=Periodic Reports described in § 63.152 of this Subpart.

(ii) For an incinerator, the percent reduction of organic HAP or TOC achieved by the incinerator determined as specified in § 63.116(c), or the concentration of organic HAP or TOC (parts per million by volume, by compound) determined as specified in § 63.116(c) at the outlet of the incinerator on a dry basis corrected to 3 percent oxygen.

(iii) For a boiler or process heater, a description of the location at which the vent stream is introduced into the boiler or process heater.

(iv) For a boiler or process heater with a design heat input capacity of less than 44 megawatts and where the process vent stream is introduced with combustion air or used as a secondary fuel and is not mixed with the primary fuel, the percent reduction of organic HAP or TOC, or the concentration of organic HAP or TOC (parts per million by volume, by compound) determined as specified in § 63.116(c) at the outlet of the combustion device on a dry basis corrected to 3 percent oxygen.

(5) Record and report the following when using a flare to comply with § 63.113(a)(1):

(i) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.116(a) of this Subpart; and

(iii) All periods during the compliance determination when the pilot flame is absent.

(6) Record and report the following when using a scrubber following a combustion device to control a halogenated process vent stream:

(i) The percent reduction or scrubber outlet concentrations of hydrogen halides and halogens as specified in § 63.116(d);

(ii) The pH of the scrubber effluent; and

(iii) The scrubber liquid to gas ratio.

(7) Record and report the following when achieving and maintaining a TRE index value greater than 1.0 but less than 4.0 as specified in § 63.113(a)(3) or § 63.113(d):

(i) The parameter monitoring results for absorbers, condensers, or carbon adsorbers, as specified in Table 4 of this subpart, and averaged over the same time period of the measurements of vent stream flow rate and concentration used in the TRE determination (both measured while the vent stream is normally routed and constituted), and

(ii) The measurements and calculations performed to determine the TRE index value of the vent stream.

(8) Record and report the halogen concentration in the process vent stream determined according to the procedures specified in § 63.115(d)(2)(v).

TABLE 4.—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR MAINTAINING A TRE INDEX VALUE >1.0 AND ≤4.0

Final recovery device	Parameters to be monitored[a]	Recordkeeping and reporting requirements for monitored parameters
Absorber[b]	Exit temperature of the absorbing liquid [63.114(b)(1)], and	1. Continuous records[c] 2. Record and report the exit temperature of the absorbing liquid averaged over the full period of the TRE determination—NCS[d] 3. Record the daily average exit temperature of the absorbing liquid for each operating day[e] 4. Report all operating days when the daily average exit temperature of the absorbing liquid is outside the range established in the NCS or operating permit—PR[f]
	Exit specific gravity [63.114(b)(1)]	1. Continuous records. 2. Record and report the exit specific gravity averaged over the full period of the TRE determination—NCS. 3. Record the daily average exit specific gravity for each operating day[e] 4. Report all operating days when the daily average exit specific gravity is outside the range established in the NCS or operating permit—PR.
Condenser[d]	Exit (product side) temperature [63.114(b)(2)]	1. Continuous records. 2. Record and report the exit temperature averaged over the full period of the TRE determination—NCS. 3. Record the daily average exit temperature for each operating day[e] 4. Report all operating days when the daily average exit temperature is outside the range established in the NCS or operating permit—PR.
Carbon Adsorber[d]	Total regeneration stream mass flow during carbon bed regeneration cycle(s) [63.114(b)(3)], and	1. Record of total regeneration stream mass flow for each carbon bed regeneration cycle. 2. Record and report the total regeneration stream mass flow during each carbon bed regeneration cycle during the period of the TRE determination—NCS. 3. Report all carbon bed regeneration cycles when the total regeneration stream mass flow is outside the range established in the NCS or operating permit—PR.
	Temperature of the carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)] [63.114(b)(3)].	1. Records of the temperature of the carbon bed after each regeneration. 2. Record and report the temperature of the carbon bed after each regeneration during the period of the TRE determination—NCS 3. Report all carbon bed regeneration cycles during which temperature of the carbon bed after regeneration is outside the range established in the NCS or operating permit—PR.
All Recovery Devices (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device.	1. Continuous records. 2. Record and report the concentration level or reading averaged over the full period of the TRE determination—NCS. 3. Record the daily average concentration level or reading for each operating day[e] 4. Report all operating days when the daily average concentration level or reading is outside the range established in the NCS or operating permit—PR.

[a] Regulatory citations are listed in brackets.

[b] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table under "All Recovery Devices."

[c] "Continuous records" is defined in § 63.111 of this Subpart.

[d] NCS = Notification of Compliance Status described in § 63.152 of this Subpart.

[e] The daily average is the average of all values recorded during the operating day. If all recorded values during an operating day are within the range established in the NCS or operating permit, a statement to this effect can be recorded instead of the daily average.

[f] PR = Periodic Reports described in § 63.152 of this Subpart.

(b) The owner or operator of a Group 2 process vent with a TRE index greater than 4.0 as specified in § 63.113(e), shall maintain records and submit as part of the Notification of Compliance Status specified in § 63.152 of this subpart, measurements, engineering assessments, and calculations performed to determine the TRE index value of the vent stream. Documentation of engineering assessments shall include all data, assumptions, and procedures used for the engineering assessments, as specified in § 63.115(d)(1) of this subpart.

(c) Each owner or operator who elects to demonstrate that a process vent is a Group 2 process vent based on a flow rate less than 0.005 standard cubic meter per minute must submit to the Administrator the flow rate measurement using methods and procedures specified in § 63.115 (a) and (b) with the Notification of Compliance Status specified in § 63.152 of this subpart.

(d) Each owner or operator who elects to demonstrate that a process vent is a Group 2 process vent based on organic HAP or TOC concentration less than 50 parts per million by volume must submit to the Administrator an organic HAP or TOC concentration measurement using the methods and procedures specified in § 63.115 (a) and (c) with the Notification of Compliance

Status specified in § 63.152 of this subpart.

(e) If an owner or operator requests approval to use a control or recovery device other than listed in Tables 3 and 4 or to monitor a parameter other than those specified in Tables 3 and 4, the owner or operator shall submit a description of planned reporting and recordkeeping procedures as required under § 63.151(f) or § 63.152(e). The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Implementation Plan or permit application.

(f) For each parameter monitored according to Tables 3 or 4 of this subpart or paragraph (e) of this section, the owner or operator shall establish a range for the parameter that indicates proper operation of the control or recovery device. In order to establish the range, the information required in § 63.152(b) of this subpart shall be submitted in the Notification of Compliance Status or the operating permit application.

(Approved by the Office of Management and Budget under Control Number ________.)

§ 63.118 Process vents provisions—Periodic reporting and recordkeeping requirements.

(a) Each owner or operator using a control device to comply with § 63.113 (a)(1) or (a)(2) shall keep the following records up-to-date and readily accessible:

(1) Continuous records of the equipment operating parameters specified to be monitored under § 63.114(a) and listed in Table 3 in § 63.117 or specified by the Administrator in accordance with § 63.114(c) and § 63.117(e), and

(2) Records of the daily average value of each continuously monitored parameter for each operating day, except as provided in paragraphs (a)(2)(iii) and (a)(2)(iv) of this section.

(i) The daily average shall be calculated as the average of all values for a monitored parameter recorded during the operating day. The average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per day if operation is not continuous.

(ii) The operating day shall be the period defined in the operating permit or the Notification of Compliance Status. It may be from midnight to midnight or another daily period.

(iii) If all recorded values for a monitored parameter during an operating day are within the range established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were within the range rather than calculating and recording a daily average for that day.

(iv) For flares, records of the duration of all periods during which the pilot flame is absent shall be kept rather than daily averages.

(3) Continuous records of the flow indication specified under § 63.114(d)(1), as well as records of the duration of all periods when the vent stream is diverted from the control device.

(4) Where a seal mechanism is used to comply with § 63.114(d)(2), a record of continuous flow is not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the duration of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken.

(b) Each owner or operator using a product recovery device or other means to achieve and maintain a TRE index value greater than 1.0 but less than 4.0 as specified in § 63.113(a)(3) or § 63.113(d) shall keep the following records up-to-date and readily accessible:

(1) Continuous records of the equipment operating parameters specified to be monitored under § 63.114(b) and listed in Table 4 in § 63.117, or specified by the Administrator in accordance with § 63.114(c) and § 63.117(e) and

(2) Records of the daily average value of each continuously monitored parameter for each operating day, except as provided in paragraph (b)(2)(iii) and (b)(2)(iv) of this section.

(i) The daily average shall be calculated as the average of all values for a monitored parameter recorded during the operating day. The average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per day if operation is not continuous.

(ii) The operating day shall be the period defined in the operating permit or the Notification of Compliance Status. It may be from midnight to midnight or another daily period.

(iii) If all recorded values for a monitored parameter during an operating day are within the range established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were within the range rather than calculating and recording a daily average for that day.

(iv) If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the records specified in Table 4 of this subpart shall be kept instead of the daily averages.

(c) Each owner or operator subject to the provisions of this subpart and who elects to demonstrate compliance with the TRE index value greater than 4.0 under § 63.113(e) or greater than 1.0 under § 63.113(a)(3) or § 63.113(d) shall keep up-to-date, readily accessible records of:

(1) Any process changes as defined in § 63.115(e); and

(2) Any recalculation of the TRE index value pursuant to § 63.115(e).

(d) Each owner or operator who elects to comply by maintaining a flow rate less than 0.005 standard cubic meter per minute under § 63.113(f), shall keep up-to-date, readily accessible records of:

(1) Any process changes as defined in § 63.115(e) that increase the vent stream flow rate,

(2) Any recalculation or measurement of the flow rate pursuant to § 63.115(e), and

(3) If the flow rate increases to 0.005 standard cubic meter per minute or greater as a result of the process change, the TRE determination performed according to the procedures of § 63.115(d).

(e) Each owner or operator who elects to comply by maintaining an organic HAP concentration less than 50 parts per million by volume organic HAP concentration under § 63.113(g) shall keep up-to-date, readily accessible records of:

(1) Any process changes as defined in § 63.115(e) that increase the organic HAP concentration of the process vent stream,

(2) Any recalculation or measurement of the concentration pursuant to § 63.115(e), and

(3) If the organic HAP concentration increases to 50 parts per million by volume or greater as a result of the process change, the TRE determination performed according to the procedures of § 63.115(d).

(f) Each owner or operator who elects to comply with the requirements of § 63.113 shall submit to the Administrator Periodic Reports of the following recorded information according to the schedule in § 63.152 of this Subpart.

(1) Reports of all operating days when the daily average values of monitored parameters recorded under § 63.118(a) and (b) were outside the ranges established in the Notification of Compliance Status or operating permit.

(2) All periods recorded under § 63.118(a)(3) when the vent stream is diverted from the control device through a bypass line.

(3) All periods recorded under § 63.118(a)(4) in which the seal mechanism is broken, the bypass line valve position has changed, or the key to unlock the bypass line valve was checked out.

(4) All periods recorded under § 63.118(a)(2)(iv) in which the pilot flame of a flare was absent.

(5) All carbon bed regeneration cycles during which the parameters recorded under § 63.118(b)(2)(iv) were outside the ranges established in the Notification of Compliance Status or operating permit.

(g) Whenever a process change, as defined in § 63.115(e) of this Subpart, is made that causes a Group 2 process vent to become a Group 1 process vent, the owner or operator shall submit a report within 90 days after the process change. The report shall include:

(1) A description of the process change;

(2) The results of the recalculation of the flow rate, organic HAP concentration, and TRE index value required under § 63.115(e) and recorded under § 63.118(c), (d), or (e) of this subpart; and

(3) A statement that the owner or operator will comply with the provisions of § 63.113 of this subpart for Group 1 process vents by the dates specified in subpart F.

(h) Whenever a process change, as defined in § 63.115(e) of this subpart, is made that causes a Group 2 process vent with a TRE greater than 4.0 to become a Group 2 process vent with a TRE less than 4.0, the owner or operator shall submit a report within 90 days after the process change. The report shall include:

(1) A description of the process change,

(2) The results of the recalculation of the TRE index value required under § 63.115(e) and recorded under § 63.118(c) of this subpart, and

(3) A statement that the owner or operator will comply with the requirements specified in § 63.113(d) of this subpart.

(i) Whenever a process change, as defined in § 63.115(e) of this subpart, is made that causes a Group 2 process vent with a flow rate less than 0.005 standard cubic meter per minute to become a Group 2 process vent with a flow rate of 0.005 standard cubic meter per minute or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 90 days after the process change. The report shall include:

(1) A description of the process change,

(2) The results of the recalculation of the flow rate and the TRE determination required under § 63.115(e) and recorded under § 63.118(d) of this subpart, and

(3) A statement that the owner or operator will comply with the requirements specified in § 63.113(d) of this subpart.

(j) Whenever a process change, as defined in § 63.115(e) of this subpart, is made that causes a Group 2 process vent with an organic HAP concentration less than 50 parts per million by volume to become a Group 2 process vent with an organic HAP concentration of 50 parts per million by volume or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 90 days after the process change. The report shall include:

(1) A description of the process change,

(2) The results of the recalculation of the organic HAP concentration and the TRE determination required under § 63.115(e) and recorded under § 63.118(e) of this subpart, and

(3) A statement that the owner or operator will comply with the requirements specified in § 63.113(d) of this subpart.

(k) The owner or operator is not required to submit a report of a process change if one of the conditions listed in paragraphs (k)(1), (k)(2), (k)(3), or (k)(4) of this section is met.

(1) The process change does not meet the definition of a process change in § 63.115(e) of this subpart, or

(2) The vent stream flow rate is recalculated according to § 63.115(e) of this subpart and the recalculated value is less than 0.005 standard cubic meter per minute, or

(3) The organic HAP concentration of the vent stream is recalculated according to § 63.115(e) of this subpart and the recalculated value is less than 50 parts per million by volume, or

(4) The TRE index value is recalculated according to § 63.115(e) of this subpart and the recalculated value is greater than 4.0.

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§ 63.119 Storage vessel provisions—reference control technology.

(a) For each storage vessel to which this subpart applies, the owner or operator shall comply with the requirements of paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section according to the schedule provisions of § 63.100(f) of subpart F of this part.

(1) For each Group 1 storage vessel (as defined in Table 5 of this subpart for existing sources and Table 6 of this subpart for new sources) storing a liquid for which the maximum true vapor pressure of the total organic HAP's in the liquid is less than 76.6 kilopascals, the owner or operator shall reduce HAP emissions to the atmosphere by operating and maintaining either a fixed roof and internal floating roof, an external floating roof, an external floating roof converted to an internal floating roof, or a closed vent system and control device in accordance with the requirements in paragraph (b), (c), (d), or (e) of this section, or equivalent as provided in § 63.121 of this subpart.

TABLE 5.—GROUP 1 STORAGE VESSELS AT EXISTING SOURCES

Vessel capacity (cubic meters)	Vapor pressure[a] (kilopascals)
75 ≤ capacity < 151	≥ 13.1
151 ≤ capacity	≥ 5.2

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

TABLE 6.—GROUP 1 STORAGE VESSELS AT NEW SOURCES

Vessel capacity (cubic meters)	Vapor pressure[a] (kilopascals)
38 ≤ capacity < 151	≥ 13.1
151 ≤ capacity	≥ 0.7

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

(2) For each Group 1 storage vessel (as defined in Table 5 of this subpart for existing sources and Table 6 of this subpart for new sources) storing a liquid for which the maximum true vapor pressure of the total organic HAP's in the liquid is greater than or equal to 76.6 kilopascals, the owner or operator shall operate and maintain a closed vent system and control device meeting the requirements specified in paragraph (e) of this section, or equivalent as provided in § 63.121 of this subpart.

(3) For each Group 2 storage vessel that is not part of an emissions average as described in § 63.150 of this subpart, the owner or operator shall comply with the recordkeeping requirement in § 63.123(a) of this subpart and is not required to comply with any other provisions in §§ 63.119 through 63.123 of this subpart.

(4) For each Group 2 storage vessel that is part of an emissions average, the owner or operator shall comply with the emissions averaging provisions in § 63.150 of this subpart.

(b) The owner or operator who elects to use a fixed roof and an internal floating roof, as defined in § 63.111 of this subpart, to comply with the requirements of paragraph (a)(1) of this section shall comply with the requirements specified in paragraphs (b)(1) through (b)(7) of this section.

(1) The internal floating roof shall be floating on the liquid surface at all times except when the floating roof must be supported by the leg supports during the following periods:

(i) During the initial fill,

(ii) After the vessel has been completely emptied and degassed,

(iii) When the vessel is partially or completely emptied before being subsequently refilled or degassed.

(2) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as soon as possible.

(3) Each internal floating roof shall be equipped with one of the closure devices listed in paragraphs (b)(3)(i), (ii), or (iii) of this section between the wall of the storage vessel and the edge of the internal floating roof.

(i) A liquid-mounted seal as defined in § 63.111 of this subpart.

(ii) A metallic shoe seal as defined in § 63.111 of this Subpart.

(iii) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous seals.

(4) Automatic bleeder vents are to be closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the roof leg supports.

(5) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(6) Each internal floating roof shall meet the specifications listed in paragraphs (b)(6)(i) through (b)(6)(vi) of this section.

(i) Each opening in the internal floating roof except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains shall be equipped with a cover or lid. The cover or lid shall be equipped with a gasket.

(ii) Each penetration of the internal floating roof for the purposes of sampling shall be a sample well. Each sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(iii) Each automatic bleeder vent shall be gasketed.

(iv) Rim space vents shall be gasketed.

(v) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(vi) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(7) Each cover or lid on any opening in the internal floating roof shall be closed (i.e., no visible gaps), except when the cover or lid must be open for access. Covers on each access hatch and each automatic gauge float well shall be bolted when they are closed. Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(c) The owner or operator who elects to use an external floating roof, as defined in § 63.111 of this Subpart, to comply with the requirements of paragraph (a)(1) of this section shall comply with the requirements specified in paragraphs (c)(1) through (c)(4) of this section.

(1) Each external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge.

(i) Except as provided in paragraph (c)(1)(iv) of this section, the closure device is to consist of two seals, one above the other. The lower seal is referred to as the primary seal and the upper seal is referred to as the secondary seal.

(ii) Except as provided in paragraph (c)(1)(v) of this section, the primary seal shall be either a metallic shoe seal or a liquid-mounted seal.

(iii) Except during the inspections required by § 63.120(b) of this Subpart, both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion.

(iv) If the external floating roof is equipped with a liquid-mounted primary seal as of December 31, 1992, the requirement for a secondary seal in paragraph (c)(1)(i) of this section does not apply until the earlier of the following dates:

(A) The next time the storage vessel is emptied and degassed, or

(B) No later than 10 years after the date of promulgation.

(v) If the external floating roof is equipped with a vapor-mounted primary seal and a secondary seal as of December 31, 1992, the requirement for a liquid-mounted or metallic shoe primary seal in paragraph (c)(1)(ii) of this section does not apply until the earlier of the following dates:

(A) The next time the storage vessel is emptied and degassed, or

(B) No later than 10 years after the date of promulgation.

(2) Each external floating roof shall meet the specifications listed in paragraphs (c)(2)(i) through (c)(2)(ix).

(i) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in the noncontact external floating roof shall provide a projection below the liquid surface.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal or lid which is to be maintained in a closed position (i.e., no visible gap) at all times except when the cover or lid must be open for access. Covers on each access hatch and gauge float well shall be bolted when they are closed.

(iii) Automatic bleeder vents are to be closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the roof leg supports.

(iv) Rim space vents are to be set to open only when the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(v) Automatic bleeder vents and rim space vents are to be gasketed.

(vi) Each roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(vii) Each unslotted guide pole well shall have a gasketed sliding cover or a flexible fabric sleeve seal.

(viii) Each slotted guide pole well shall have:

(A) A gasketed sliding cover or a flexible fabric sleeve seal; and

(B) A gasketed float inside the guide pole.

(ix) Each gauge hatch/sample well shall have a gasketed cover which is closed at all times except when the hatch or well must be open for access.

(3) The external floating roof shall be floating on the liquid surface at all times except when the floating roof must be supported by the leg supports during the following periods:

(i) During the initial fill,

(ii) After the vessel has been completely emptied and degassed,

(iii) When the vessel is partially or completely emptied before being subsequently refilled or degassed.

(4) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as soon as possible.

(d) The owner or operator who el to use an external floating roof converted to an internal floating roof (i.e., fixed roof installed above external floating roof) to comply with paragraph (a)(1) of this section shall comply with paragraphs (d)(1) and (d)(2) of this section.

(1) Comply with the requirements for internal floating roof vessels specified in paragraphs (b) (1), (2), and (3) of this section; and

(2) Comply with the requirements for deck fittings that are specified for external floating roof vessels in paragraphs (c)(2)(i) through (c)(2)(ix) of this section.

(e) The owner or operator who elects to use a closed vent system and control device, as defined in § 63.111 of this subpart, to comply with the requirements of paragraph (a)(1) or (a)(2) of this section shall comply with the requirements specified in paragraphs (e)(1) through (e)(4) of this section.

(1) The closed vent system shall be designed to collect the vapors and gases discharged from the storage vessel and shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 parts per million by volume above background, as determined by Method 21 of 40 CFR part 60, appendix A.

(2) The control device shall be designed and operated to reduce inlet emissions by 95 percent or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements of 40 CFR 63.11(b).[3]

(3) The specifications and requirements listed in paragraph (e)(2) of this section for control devices do not apply during periods of routine maintenance. Periods of routine maintenance shall not exceed 72 hours per year as required by § 63.120(d)(3) of this subpart.

(4) The specifications and requirements listed in paragraphs (e)(1) and (e)(2) of this section for closed vent systems and control devices do not apply during a control system malfunction.

§ 63.120 Storage vessel provisions—procedures to determine compliance.

(a) To demonstrate compliance with § 63.119(b) of this Subpart (storage vessel equipped with a fixed roof and internal floating roof) or with § 63.119(d) (storage vessel equipped with an external floating roof converted to an internal floating roof), the owner or operator shall comply with the requirements in paragraphs (a)(1) through (a)(7) of this section.

(1) The owner or operator shall visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service), according to the schedule specified in paragraphs (a)(2) and (a)(3) of this section.

(2) For vessels equipped with a single-seal system, the owner or operator shall perform the inspections specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(i) Visually inspect the internal floating roof and the seal through manholes and roof hatches on the fixed roof at least once every 12 months after initial fill, or at least once every 12 months after the compliance date specified in § 63.100(f) of subpart F of this part.

(ii) Visually inspect the internal floating roof, the seal, gaskets, slotted membranes, and sleeve seals (if any) each time the storage vessel is emptied and degassed, and at least once every 10 years after the compliance date specified in § 63.100(f) of subpart F of this part.

(3) For vessels equipped with a double-seal system as specified in § 63.119(b)(3)(iii) of this subpart, the owner or operator shall perform either the inspection required in paragraph (a)(3)(i) of this section or the inspections required in both paragraphs (a)(3)(ii) and (a)(3)(iii) of this section.

(i) The owner or operator shall visually inspect the internal floating roof, the primary seal, the secondary seal, gaskets, slotted membranes, and sleeve seals (if any) each time the storage vessel is emptied and degassed and at least once every 5 years after the compliance date specified in § 63.100(f) of subpart F of this part; or

(ii) The owner or operator shall visually inspect the internal floating roof and the secondary seal through manholes and roof hatches on the fixed roof at least once every 12 months after initial fill, or at least once every 12 months after the compliance date specified in § 63.100(f) of subpart F of this part, and

(iii) Visually inspect the internal floating roof, the primary seal, the secondary seal, gaskets, slotted membranes, and sleeve seals (if any) each time the vessel is emptied and degassed and at least once every 10 years after the compliance date specified in § 63.100(f) of subpart F of this part.

(4) If during the inspections required by paragraphs (a)(2)(i) or (a)(3)(ii) of this section, the internal floating roof is not resting on the surface of the liquid inside the storage vessel and is not resting on the leg supports; or there is liquid on the floating roof; or the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage vessel, the owner or operator shall repair the items or empty and remove the storage vessel from service within 45 days. If a failure that is detected during inspections required by paragraphs (a)(2)(i) and (a)(3)(ii) of this section cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, 2 extensions of up to 30 additional days each may be requested from the Administrator. Each request for an extension shall include a description of the failure, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(5) Except as provided in paragraph (a)(6) of this section, for all the inspections required by paragraphs (a)(2)(ii), (a)(3)(i), and (a)(3)(iii) of this section, the owner or operator shall notify the Administrator in writing at least 30 days prior to the refilling of each storage vessel to afford the Administrator the opportunity to have an observer present.

(6) If the inspection required by paragraphs (a)(2)(ii), (a)(3)(i), or (a)(3)(iii) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the vessel, the owner or operator shall notify the Administrator at least 7 days prior to the refilling of the storage vessel. Notification may be made by telephone and immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, the notification including the written documentation may be made in writing and sent so that it is received by the Administrator at least 7 days prior to refilling.

(7) If during the inspections required by paragraphs (a)(2)(ii), (a)(3)(i), or (a)(3)(iii) of this section, the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surface from the atmosphere, or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the storage vessel with organic HAP.

(b) To demonstrate compliance with § 63.119(c) of this Subpart (storage vessel equipped with an external floating roof), the owner or operator shall comply with the requirements specified in paragraphs (b)(1) through (b)(10) of this section.

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[3] The EPA will propose subpart A in the future.

(1) Except as provided in paragraph (b)(7) of this section, the owner or operator shall determine the gap areas and maximum gap widths between the primary seal and the wall of the storage vessel, and the secondary seal and the wall of the storage vessel according to the following frequency:

(i) For an external floating roof vessel equipped with primary and secondary seals, measurements of gaps between the vessel wall and the primary seal shall be performed during the hydrostatic testing of the vessel or by the compliance date specified in § 63.100(f) of subpart F of this part, whichever occurs last, and at least once every 5 years thereafter.

(ii) Measurements of gaps between the vessel wall and the secondary seal shall be performed by the compliance date specified in § 63.100(f) of subpart F of this part and at least once per year thereafter.

(iii) If any storage vessel ceases to store organic HAP for a period of 1 year or more, or if the maximum true vapor pressure of the total organic HAP's in the stored liquid falls below the appropriate values specified in Table 5 or Table 6 of this subpart for a period of 1 year or more, measurements of gaps between the vessel wall and the primary seal, and gaps between the vessel wall and the secondary seal shall be performed within 90 days of the vessel being refilled with organic HAP.

(2) Except as provided in paragraph (b)(7) of this section, the owner or operator shall determine gap widths and gap areas in the primary and secondary seals (seal gaps) individually by the procedures described in paragraphs (b)(2)(i) through (b)(2)(iii) of this section.

(i) Seal gaps, if any, shall be measured at one or more floating roof levels when the roof is floating off the roof leg supports.

(ii) Seal gaps shall be measured around the entire circumference of the vessel in each place where a 0.32 centimeter diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the storage vessel. The circumferential distance of each such location shall also be measured.

(iii) The total surface area of each gap described in paragraph (b)(2)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the vessel wall to the seal and multiplying each such width by its respective circumferential distance.

(3) The owner or operator shall add the gap surface area of each gap location for the primary seal and divide the sum by the nominal diameter of the vessel. The accumulated area of gaps between the vessel wall and the metallic shoe seal or the liquid-mounted primary seal shall not exceed 212 square centimeters per meter of vessel diameter and the width of any portion of any gap shall not exceed 3.81 centimeters.

(4) The owner or operator shall add the gap surface area of each gap location for the secondary seal and divide the sum by the nominal diameter of the vessel. The accumulated area of gaps between the vessel wall and the secondary seal shall not exceed 21.2 square centimeters per meter of vessel diameter and the width of any portion of any gap shall not exceed 1.27 centimeters. These seal gap requirements may be exceeded during the measurement of primary seal gaps as required by paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(5) The primary seal shall meet the additional requirements specified in paragraphs (b)(5)(i) and (b)(5)(ii) of this section.

(i) Where a metallic shoe seal is in use, one end of the metallic shoe shall extend into the stored liquid and the other end shall extend a minimum vertical distance of 61 centimeters above the stored liquid surface.

(ii) There shall be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(6) The secondary seal shall meet the additional requirements specified in paragraphs (b)(6)(i) and (b)(6)(ii) of this section.

(i) The secondary seal shall be installed above the primary seal so that it completely covers the space between the roof edge and the vessel wall except as provided in paragraph (b)(4) of this section.

(ii) There shall be no holes, tears, or other openings in the seal or seal fabric.

(7) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in paragraphs (b)(1) and (b)(2) of this section or to inspect the vessel to determine compliance with paragraphs (b)(5) and (b)(6) of this section because the floating roof appears to be structurally unsound and poses an imminent or potential danger to inspecting personnel, the owner or operator shall comply with the requirements in either paragraph (b)(7)(i) or (b)(7)(ii) of this section.

(i) The owner or operator shall measure the seal gaps or inspect the storage vessel no later than 30 days after the determination that the roof is unsafe, or

(ii) The owner or operator shall empty and remove the storage vessel from service no later than 45 days after determining that the roof is unsafe. If the vessel cannot be emptied within 45 days, 2 extensions of up to 30 additional days each may be requested from the Administrator. Each extension request shall include an explanation of why it was unsafe to perform the inspection or seal gap measurement, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the vessel will be emptied as soon as possible.

(8) The owner or operator shall repair conditions that do not meet requirements listed in paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) of this section (i.e., failures) no later than 45 days after identification, or shall empty and remove the storage vessel from service no later than 45 days after identification. If during seal gap measurements required in paragraphs (b)(1) and (b)(2) of this section or during inspections necessary to determine compliance with paragraphs (b)(5) and (b)(6) of this section a failure is detected that cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, two extensions of up to 30 additional days each may be requested from the Administrator. Each extension request shall include a description of the failure, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(9) The owner or operator shall notify the Administrator in writing 30 days in advance of any gap measurements required by paragraphs (b)(1) or (b)(2) of this section to afford the Administrator the opportunity to have an observer present.

(10) The owner or operator shall visually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.

(i) If the external floating roof has defects; the primary seal has holes, tears, or other openings in the seal or the seal fabric; or the secondary seal has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the liquid surface from the atmosphere; or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before filling or refilling the storage vessel with organic HAP.

(ii) Except as provided in paragraph (b)(10)(iii) of this section, for all the inspections required by paragraph (b)(10) of this section, the owner or operator shall notify the Administrator in writing at least 30 days prior to filling or refilling of each storage vessel with organic HAP to afford the Administrator the opportunity to inspect the storage vessel prior to refilling.

(iii) If the inspection required by paragraph (b)(10) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the vessel with organic HAP, the owner or operator shall notify the Administrator at least 7 days prior to refilling of the storage vessel. Notification may be made by telephone and immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification including the written documentation may be made in writing and sent so that it is received by the Administrator at least 7 days prior to the refilling.

(c) To demonstrate compliance with § 63.119(d) of this subpart (storage vessel equipped with an external floating roof converted to an internal floating roof), the owner or operator shall comply with the requirements of paragraph (a) of this section.

(d) To demonstrate compliance with § 63.119(e) of this subpart (storage vessel equipped with a closed vent system and control device) using a control device other than a flare, the owner or operator shall comply with the requirements in paragraphs (d)(1) through (d)(4) of this section.

(1) The owner or operator shall submit, as part of the Implementation Plan required by § 63.151(d) of this subpart, the information specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.

(i) Documentation demonstrating that the control device being used achieves the required control efficiency during reasonably expected maximum loading conditions. This documentation is to include a description of the gas stream which enters the control device, including flow and organic HAP content under varying liquid level conditions (dynamic and static), and a design evaluation for the control device.

(A) If the closed vent system or control device receives vapors, gases or liquids, other than fuels, from emission points other than storage vessels subject to this subpart, the efficiency demonstration is to include consideration of all vapors, gases, and liquids received by the closed vent system and control device.

(B) If an enclosed combustion device with a minimum residence time of 0.75 seconds and a minimum temperature of 816 °C is used to meet the 95-percent emission reduction requirement, documentation that those conditions exist is sufficient to meet the requirements of paragraph (d)(1)(i) of this section.

(C) Except as provided in paragraph (d)(1)(i)(B) of this section, for thermal incinerators, the design evaluation shall include the autoignition temperature of the organic HAP, the flow rate of the organic HAP emission stream, the combustion temperature, and the residence time at the combustion temperature.

(D) For carbon adsorbers, the design evaluation shall include the affinity of the organic HAP vapors for carbon, the amount of carbon in each bed, the number of beds, the humidity of the feed gases, the temperature of the feed gases, the flow rate of the organic HAP emission stream, the desorption schedule, the regeneration stream pressure or temperature, and the flow rate of the regeneration stream. For vacuum desorption, pressure drop shall be included.

(E) For condensers, the design evaluation shall include the final temperature of the organic HAP vapors, the type of condenser, and the design flow rate of the organic HAP emission stream.

(ii) A description of the parameter or parameters to be monitored to ensure that the control device is operated and maintained in conformance with its design, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed.

(2) The owner or operator shall submit, as part of the Notification of Compliance Status required by § 63.152(b) of this subpart, the operating range for each monitoring parameter identified in the Implementation Plan. The specified operating range shall represent the conditions for which the control device can achieve the 95 percent or greater emission reduction required by § 63.119(e)(2) of this subpart.

(3) The owner or operator shall ensure that the time during which the control device does not meet the specifications of § 63.119(e)(2) due to routine maintenance does not exceed 72 hours per year. The owner or operator shall demonstrate compliance with the requirements of this paragraph by including in each Periodic Report required by § 63.152(c) of this subpart the information specified in § 63.122(g)(1) of this subpart.

(4) The owner or operator shall monitor the parameters specified in the Notification of Compliance Status required in § 63.152(b) of this subpart or operating permit and shall operate and maintain the closed vent system and control device such that the monitored parameters remain within the ranges specified in the Notification of Compliance Status.

(e) To demonstrate compliance with § 63.119(e) of this subpart (storage vessel equipped with a closed vent system and control device) using a flare, the owner or operator shall comply with the requirements in paragraphs (e)(1) through (e)(3) of this section.

(1) The owner or operator shall perform the compliance determination specified in § 63.11(b) of subpart A of this part.[4]

(2) The owner or operator shall submit, as part of the Notification of Compliance Status required by § 63.152(b) of this subpart, the information specified in paragraphs (e)(2)(i) through (e)(2)(iii) of this section.

(i) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by paragraph (e)(1) of this section; and

(iii) All periods during the compliance determination when the pilot flame is absent.

(3) The owner or operator shall ensure that the time during which the flare does not meet the requirements of § 63.11(b) of subpart A of this part[5] due to routine maintenance does not exceed 72 hours per year. The owner or operator shall demonstrate compliance with the requirements of this paragraph by including in each Periodic Report required by § 63.152(c) of this subpart the information specified in § 63.122(g)(1) of this subpart.

(4) The owner or operator shall continue to meet the general control device requirements specified in § 63.11(b) of subpart A of this part.[6]

(f) Except as provided in paragraphs (f)(3), (f)(4), and (f)(5) of this section, to demonstrate compliance with § 63.119(e) of this subpart (storage vessel equipped with a closed vent system and control device), the owner or operator shall inspect the closed vent system for detectable emissions of 500 parts per million by volume or greater above background, and shall repair any leaks detected.

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[4] The EPA will propose subpart A in the future.

[5] See Footnote 4.

[6] The EPA will propose subpart A in the future.

(1) Inspections of the closed vent system shall be done during filling of the vessel and at least once per year.

(2) Except as provided in paragraph (f)(2)(iii) of this section, leaks, as indicated by an instrument reading of 500 parts per million by volume or greater above background as determined by Method 21 of 40 CFR part 60, appendix A, or by visual inspections shall be repaired as soon as practical.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Repair shall be completed no later than 15 calendar days after the leak is detected.

(iii) Delay of repair of a closed vent system for which leaks were detected is allowed if the repair is technically infeasible without a process unit shutdown or if the owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair.

(A) The owner or operator shall notify the Administrator within 30 days if there will be a delay in the repair of a closed vent system. The notification shall explain why the repair is technically infeasible without a process unit shutdown or shall indicate how emissions of purged material resulting from immediate repair would be greater than the fugitive emissions that would likely result from delay of repair.

(B) If an owner or operator elects to delay the repair of a closed vent system in accordance with paragraph (f)(2)(iii) of this section, the closed vent system shall be repaired by the end of the next process unit shutdown.

(3) Any parts of the closed vent system that are designated, as described in § 63.123(f)(4) of this subpart, as unsafe to inspect are exempt from the inspection requirements of paragraph (f) of this section if:

(i) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (f) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(4) Any parts of the closed vent system that are designated, as described in § 63.123(f)(5) of this subpart, as difficult to inspect are exempt from the inspection requirements of paragraph (f) of this section if:

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface;

(ii) The storage vessel which is equipped with the closed vent system is an existing storage vessel within an existing source; and

(iii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(5) Any parts of the closed vent system that are subject to monitoring requirements under the equipment leak provisions of § 63.172 of subpart H of this part shall comply with the provisions of § 63.172 of this part and are exempt from the inspection requirements of paragraph (f) of this section.

§ 63.121 Storage vessel provisions—alternative means of emission limitation.

(a) Determination of equivalence to the reduction in emissions achieved by the requirements of § 63.119(b), (c), or (d) of this subpart will be evaluated according to § 63.102(b) of subpart F of this part. The determination will be based on the application to the Administrator which shall include the information specified in either paragraph (a)(1) or (a)(2) of this section.

(1) Actual emissions tests that use full-size or scale-model storage vessels that accurately collect and measure all organic HAP emissions from a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or

(2) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

§ 63.122 Storage vessel provisions—reporting.

(a) For each Group 1 storage vessel, the owner or operator shall comply with the requirements of paragraphs (a)(1) through (a)(5) of this section.

(1) The owner or operator shall submit an Initial Notification as required by § 63.151(b) of this subpart.

(2) The owner or operator shall submit an Implementation Plan as required by § 63.151(d) of this subpart and shall submit as part of the Implementation Plan the information specified in paragraph (b) of this section.

(3) The owner or operator shall submit a Notification of Compliance Status as required by § 63.152(b) of this subpart and shall submit as part of the Notification of Compliance Status the information specified in paragraph (c) of this section.

(4) The owner or operator shall submit Periodic Reports as required by § 63.152(c) of this subpart and shall submit as part of the Periodic Reports the information specified in paragraphs (d), (e), (f), and (g) of this section.

(5) The owner or operator shall submit, as applicable, other reports containing the information specified in paragraphs (h) and (i) of this section.

(b) An owner or operator who elects to comply with § 63.119(e) of this subpart by using a closed vent system and a control device other than a flare shall submit, as part of the Implementation Plan required by § 63.151(d) of this subpart, the information specified in § 63.120(d)(1).

(c) An owner or operator who elects to comply with § 63.119(e) of this subpart by using a closed vent system and a control device shall submit, as part of the Notification of Compliance Status required by § 63.152(b) of this subpart, the information specified in either paragraph (c)(1) or (c)(2) of this section.

(1) If a control device other than a flare is used, the owner or operator shall submit the operating range for each monitoring parameter identified in the Notification of Compliance Status or in the operating permit.

(2) If a flare is used, the owner or operator shall submit the information specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

(i) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.120(e)(1) of this subpart; and

(iii) All periods during the compliance determination when the pilot flame is absent.

(d) An owner or operator who elects to comply with § 63.119(b) of this subpart by using a fixed roof and an internal floating roof shall submit, as part of the Periodic Report required under § 63.152(c) of this subpart, the results of each inspection conducted in accordance with § 63.120(a) of this subpart in which a failure is detected in the control equipment.

(1) For vessels for which annual inspections are required under § 63.120(a)(2)(i) or (a)(3)(ii) of this subpart,

(i) A failure is defined as any time in which the internal floating roof is not resting on the surface of the liquid inside the storage vessel and is not resting on the leg supports; or there is liquid on the floating roof; or the seal is detached from the internal floating roof;

or there are holes, tears, or other openings in the seal or seal fabric; or there are visible gaps between the seal and the wall of the storage vessel.

(ii) Except as provided in paragraph (d)(1)(iii) of this section, each Periodic Report shall include the date of the inspection, identification of each storage vessel in which a failure was detected, and a description of the failure. The Periodic Report shall also describe the nature of and date the repair was made or the date the storage vessel was emptied.

(iii) If an extension is requested in accordance with § 63.120(a)(4) of this subpart, the owner or operator shall, in the next Periodic Report, identify the vessel; document the request for the extension and the Administrator's response to the request; and describe the date the storage vessel was emptied and the nature of and date the repair was made.

(2) For vessels for which inspections are required under § 63.120(a)(2)(ii), (a)(3)(i), or (a)(3)(iii) of this subpart,

(i) A failure is defined as any time in which the internal floating roof has defects; or the primary seal has holes, tears, or other openings in the seal or the seal fabric; or the secondary seal (if one has been installed) has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the liquid surfaces from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) Each Periodic Report shall include the date of the inspection, identification of each storage vessel in which a failure was detected, and a description of the failure. The Periodic Report shall also describe the nature of and date the repair was made, or the date the storage vessel was emptied.

(e) An owner or operator who elects to comply with § 63.119(c) of this subpart by using an external floating roof shall submit, as part of the next Periodic Report required under § 63.152(c) of this subpart, documentation of the results of each seal gap measurement made in accordance with § 63.120(b) of this subpart in which the requirements of § 63.120(b)(3), (b)(4), (b)(5), or (b)(6) of this subpart are not met.

(1) Each Periodic Report shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 63.120(b) (2), (3), and (4) of this subpart. The Periodic Report shall also describe the nature of and date the repair was made, or the date the storage vessel was emptied.

(2) If an extension is requested in a Periodic Report in accordance with § 63.120 (b)(7)(ii) or (b)(8) of this subpart, the owner or operator shall, in the next Periodic Report, identify the vessel; document the request for the extension and the Administrator's response to the request; and describe the date the vessel was emptied and the nature of and date the repair was made.

(f) An owner or operator who elects to comply with § 63.119(d) of this subpart by using an external floating roof converted into an internal floating roof shall comply with the reporting requirements of paragraph (d) of this section.

(g) An owner or operator who elects to comply with § 63.119(e) of this subpart by installing a closed vent system and control device shall submit, as part of the next Periodic Report required by § 63.152(c) of this subpart, the information specified in paragraphs (g)(1) through (g)(5) of this section.

(1) The Periodic Report shall include the information specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this section for those routine maintenance operations that would require the control device not to meet the requirements of § 63.119(e)(2) of this subpart.

(i) A description of the routine maintenance that is anticipated to be performed for the control device during the next 6 months. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(ii) A description of the routine maintenance that was performed for the control device during the previous 6 months. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the closed vent system and control device did not meet the requirements of § 63.119(e)(2) of this subpart due to maintenance.

(2) If a control device other than a flare is used, the Periodic Report shall describe each occurrence when the monitored parameters were outside of the parameter ranges documented in the Notification of Compliance Status in accordance with § 63.120(d)(2) of this subpart. The description shall include the information specified in paragraphs (g)(2)(i) through (g)(2)(iv) of this section.

(i) Identification of the control device for which the measured parameters were outside of the established ranges,

(ii) Cause for the measured parameters to be outside of the established ranges,

(iii) A statement of whether or not the owner or operator believes a control system malfunction has occurred, and

(iv) Corrective action taken or preventative measures adopted.

(3) If a flare is used, the Periodic Report shall describe each occurrence when the flare does not meet the general control device requirements specified in 40 CFR 63.11(b) of subpart A of this part[7] and shall include the information specified in paragraphs (g)(3)(i) through (g)(3)(iv) of this section.

(i) Identification of the flare which does not meet the general requirements specified in 40 CFR 63.11(b) of subpart A of this part,[8]

(ii) Reason the flare did not meet the general requirements specified in 40 CFR 63.11(b) of subpart A of this part,[9]

(iii) A statement of whether or not the owner or operator believes a control system malfunction has occurred, and

(iv) Corrective action taken or preventative measures adopted.

(4) If the owner or operator states that a control system malfunction has occurred, the information specified in paragraphs (g)(4)(i) through (g)(4)(iii) of this section shall also be included in the Periodic Report.

(i) Time and duration of the control system malfunction;

(ii) Nature and cause of the malfunction (if known); and

(iii) Corrective action taken or preventative measures adopted.

(5) The Periodic Report shall include the results of each annual inspection of the closed vent system performed in accordance with § 63.120(f) of this subpart when an instrument reading of 500 parts per million by volume or greater above background is measured by Method 21 of 40 CFR part 60, appendix A.

(h) An owner or operator who elects to comply with § 63.119 (b), (c), or (d) of this subpart shall submit, as applicable, the reports specified in paragraphs (h)(1) through (h)(3) of this section.

(1) In order to afford the Administrator the opportunity to have an observer present, the owner or operator shall notify the Administrator of the refilling of a storage vessel that has been emptied and degassed.

(i) If the storage vessel is equipped with an internal floating roof as specified in § 63.119(b) of this subpart, the notification shall meet the requirements of § 63.120 (a)(5) and (a)(6) of this subpart.

(ii) If the storage vessel is equipped with an external floating roof as specified in § 63.119(c) of this subpart, the notification shall meet the requirements of either § 63.120(b)(10)(ii) or (b)(10)(iii) of this subpart.

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[7] The EPA will propose Subpart A in the future.

[8] See Footnote 7.

[9] See Footnote 7.

(iii) If the storage vessel is equipped with an external floating roof converted into an internal floating roof as specified in § 63.119(d) of this subpart, the notification shall meet the requirements of § 63.120 (a)(5) and (a)(6) of this subpart.

(2) In order to afford the Administrator the opportunity to have an observer present, the owner or operator of a storage vessel equipped with an external floating roof as specified in § 63.119(c) of this subpart shall notify the Administrator of any seal gap measurements. This notification shall meet the requirements of § 63.120(b)(9) of this subpart.

(3) If an owner or operator requests an extension for emptying a storage vessel in accordance with § 63.120 (a)(4), (b)(7)(ii), or (b)(8) of this subpart, the request shall include the information specified in § 63.120 (a)(4), (b)(7)(ii), or (b)(8) of this subpart, as applicable.

(i) If an owner or operator elects to delay the repair of a closed vent system in accordance with § 63.120(f)(2)(iii) of this subpart, the owner or operator shall notify the Administrator in a report which shall include the information specified in § 63.120(f)(2)(iii)(A) of this subpart.

(Approved by the Office of Management and Budget under Control Number ______.)

§ 63.123 Storage vessel provisions—recordkeeping.

(a) Each owner or operator of a Group 1 or Group 2 storage vessel shall keep readily accessible records showing the dimensions of the storage vessel and an analysis showing the capacity of the storage vessel. This record shall be kept as long as the storage vessel is in operation. For each Group 2 storage vessel, the owner or operator is not required to comply with any other provisions of §§ 63.119 through 63.123 other than those required by this paragraph unless such vessel is part of an emissions average as described in § 63.150 of this subpart.

(b) Each owner or operator shall keep a record of all reports submitted in accordance with § 63.122 of this subpart, including the Implementation Plan, Notification of Compliance Status, and Periodic Reports.

(c) An owner or operator who elects to comply with § 63.119(b) of this subpart shall keep a record that each inspection required by § 63.120(a) of this subpart was performed.

(d) An owner or operator who elects to comply with § 63.119(c) of this subpart shall keep records describing the results of each seal gap measurement made in accordance with § 63 120(b) of this subpart. The records shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 63.120(b) (2), (3), and (4) of this subpart.

(e) An owner or operator who elects to comply with § 63.119(d) of this subpart shall keep a record that each inspection required by § 63.120 (a) and (c) of this subpart was performed.

(f) An owner or operator who elects to comply with § 63.119(e) of this subpart shall keep in a readily accessible location the records specified in paragraphs (e)(1) through (e)(5) of this section.

(1) A record of the measured values of the parameters monitored in accordance with § 63.120(d)(1)(ii) and § 63.120(d)(4) of this subpart.

(2) A record that each inspection required by § 63.120(f) was performed.

(3) A record of the maintenance performed on the control device including the duration of each time the control device does not meet the specifications of § 63.119(e)(2) of this subpart due to maintenance. Such a record shall include the information specified in paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

(i) The first time of day and date the requirements of § 63.119(e)(2) of this subpart were not met at the beginning of maintenance, and

(ii) The first time of day and date the requirements of § 63.119(e)(2) of this subpart were met at the conclusion of maintenance.

(4) Identification of all parts of the closed vent system and control device that are designated as unsafe to inspect, an explanation of why the equipment is unsafe to inspect, and the plan for inspecting the equipment.

(5) Identification of all parts of the closed vent system and control device that are designated as difficult to inspect, an explanation of why the equipment is difficult to inspect, and the plan for inspecting the equipment.

(Approved by the Office of Management and Budget under Control Number ______.)

§§ 63.124–63.125 Reserved.

§ 63.126 Transfer operations provisions—reference control technology.

(a) The owner or operator of a Group 1 loading rack subject to the provisions of this subpart shall equip each loading rack with a vapor collection system and control device.

(1) Each vapor collection system shall be designed and operated to collect the organic HAP vapors displaced from tank trucks or railcars during loading, and to route the collected HAP vapors to a control device as provided in paragraph (b) of this section.

(2) Each vapor collection system shall be designed and operated to prevent organic HAP vapors collected at one loading arm from passing through another loading arm in the rack to the atmosphere.

(3) Each vapor collection system shall be designed for and operated with no detectable emissions, as indicated by an instrument reading of less than 500 parts per million above background, as determined by the procedures in § 63.128(e).

(i) Any leak, as indicated by an instrument reading of 500 parts per million or greater as determined by Method 21 of 40 CFR part 60, appendix A, or as indicated by visual inspections, shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(4) Whenever organic HAP emissions are vented to a control device used to comply with the provisions of this subpart, such control device shall be operating.

(b) The owner or operator of a Group 1 loading rack subject to the provisions of this subpart shall comply with paragraph (b)(1), (b)(2), or (b)(3) of this section.

(1) Use a control device to reduce emissions of organic HAP's by 98 weight-percent or to an exit concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with the percent reduction requirement, then the vent stream shall be introduced into the flame zone of such a device.

(2) Reduce emissions of organic HAP's using a flare.

(i) The flare shall comply with the requirements of § 63.11(b).[10]

(ii) Halogenated vent streams, as defined in § 63.111, shall not be vented to a flare.

(3) Reduce emissions of organic HAP using a vapor balancing system.

(i) Each vapor balancing system shall be designed and operated to collect organic HAP vapors displaced from tank trucks or railcars during loading, and to route the collected HAP vapors to the storage vessel from which the liquid being loaded originated.

(ii) Each piece of equipment in the vapor balancing system between the storage vessel and the vapor collection system shall be designed for and operated with an instrument reading of less than 500 parts per million above background as determined by the procedures in § 63.128(e). Equipment means each compressor, pressure relief device, valve, or connector.

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[10] The EPA will propose subpart A in the future.

(A) Any leaks, as indicated by an instrument reading of 500 parts per million or greater, as determined by Method 21 of 40 CFR part 60, appendix A, or by visual inspections, shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.

(B) A first attempt at repair shall be made no later than 15 calendar days after the leak is detected.

(c) For each Group 2 loading rack, the owner or operator shall maintain records as required in § 63.130(g). No other provisions of this subpart apply.

(d) If a combustion device is used to comply with paragraph (b)(1) of this section for a halogenated vent stream, then the vent stream shall be ducted from the combustion device to a scrubber before it is discharged to the atmosphere. The scrubber shall reduce overall emissions of hydrogen halides and halogens, as defined in § 63.111, by 99 percent or shall reduce the outlet concentration of each individual hydrogen halide or halogen to 0.5 milligram per dry standard cubic meter or less, whichever is less stringent.

(e) The owner or operator of a Group 1 loading rack subject to this subpart shall load organic HAP's into only tank trucks and railcars which:

(1) Have a current certification in accordance with the U.S. Department of Transportation pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars; or

(2) Have been demonstrated to be vapor-tight within the preceding 12 months, as determined by the procedures in § 63.128(f). Vapor-tight means that the truck or railcar tank will sustain a pressure change of not more than 750 pascals within 5 minutes after it is pressurized to a minimum of 4500 pascals.

(f) The owner or operator of a loading rack subject to the provisions of this subpart shall load organic HAP's to only tank trucks or railcars equipped with vapor collection equipment that is compatible with the loading rack's vapor collection system.

(g) The owner or operator of a loading rack subject to this subpart shall load organic HAP's to only tank trucks or railcars whose collection systems are connected to the loading rack's vapor collection systems.

(h) The owner or operator of a loading rack subject to the provisions of this subpart shall ensure that no pressure-vacuum vent in the loading rack's vapor collection system or in the organic HAP loading equipment of each tank truck or railcar shall begin to open during loading.

(i) Except for pressure relief valves needed for safety purposes, each valve in the vent system that would lead the vent stream to the atmosphere, either directly or indirectly, shall be secured closed using a car seal or a lock-and-key type configuration, or shall be equipped with a flow indicator.

§ 63.127 Transfer operations provisions—monitoring requirements.

(a) Each owner or operator of a Group 1 loading rack equipped with a combustion device used to comply with the 98 percent organic HAP reduction or 20 parts per million by volume outlet concentration requirements in § 63.126(b)(1) shall install, calibrate, maintain, and operate according to the manufacturers specifications the monitoring equipment specified in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section, as appropriate.

(1) Where an incinerator is used, a temperature monitoring device equipped with a recorder capable of recording the temperature at a frequency specified in § 63.130(a)(1) of this subpart is required.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) Where a flare is used, a heat-sensing device, such as an ultra-violet beam sensor or thermocouple, at the pilot light to indicate the presence of a flame is required.

(3) Where a boiler or process heater with a design heat input capacity less than 44 megawatts is used, a temperature monitoring device in the firebox equipped with a recorder capable of recording the temperature at a frequency specified in § 63.130(a)(1) of this subpart is required. Any boiler or process heater in which all vent streams are introduced with the primary fuel is exempt from this requirement.

(4) Where a scrubber is used with an incinerator, boiler, or process heater in the case of halogenated vent streams, the following monitoring equipment is required for the scrubber:

(i) A pH monitoring device equipped with a recorder capable of recording the pH at a frequency specified in § 63.130(a)(1)(i) of this subpart shall be installed to monitor the pH of the scrubber effluent.

(ii) Flow meters equipped with recorders capable of recording the flow at a frequency specified in § 63.130(a)(1) of this subpart shall be located at the scrubber influent for liquid flow and the scrubber inlet for gas stream flow.

(b) Each owner or operator of a Group 1 loading rack that uses a recovery device to comply with the 98 percent organic HAP reduction or 20 parts per million by volume HAP concentration requirements in § 63.126(b)(1) shall install either an organic monitoring device equipped with a recorder capable of recording the concentration level or organic monitor reading at a frequency specified in § 63.130(a)(1) of this subpart; or the monitoring equipment specified in paragraph (b)(1), (b)(2), or (b)(3) of this section, depending on the type of recovery device used. All monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications.

(1) Where an absorber is used, a scrubbing liquid temperature monitoring device equipped with a recorder capable of recording temperature at a frequency specified in § 63.130(a)(1) of this subpart shall be used; and a specific gravity monitoring device equipped with a recorder capable of recording specific gravity at a frequency specified in § 63.130(a)(1)(i) of this subpart shall be used.

(2) Where a condenser is used, a condenser exit (product side) temperature monitoring device equipped with a recorder capable of recording the temperature at a frequency specified in § 63.130(a)(1) of this subpart shall be used.

(3) Where a carbon adsorber is used, an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle.

(c) An owner or operator of a Group 1 loading rack may request approval to monitor parameters other than those listed in paragraph (a) or (b) of this section. The request shall be submitted according to the procedures specified in § 63.151(f) or § 63.152(e) of this subpart. Approval shall be requested if the owner or operator:

(1) Seeks to demonstrate compliance with the standards specified in § 63.126(b) with a control device other

than an incinerator, boiler, process heater, flare, absorber, condenser, or carbon adsorber; or

(2) Uses one of the control devices listed in paragraph (a) and (b) of this section, but seeks to monitor a parameter other than those specified in paragraph (a) and (b).

(d) The owner or operator of a Group 1 loading rack using a vent system that contains bypass lines that could divert a vent stream flow away from the control device used to comply with § 63.126(b) shall comply with paragraph (d)(1) or (d)(2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, and equipment subject to § 63.167 are not subject to this paragraph.

(1) Install, calibrate, maintain, and operate a flow indicator that provides a record of vent stream flow at least once every 15 minutes. The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere; or

(2) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration.

(i) A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.

(ii) If a car-seal has been broken or a valve position changed, the owner or operator shall record that the vent stream has been diverted. The car-seal or lock-and-key combination shall be returned to the secured position as soon as practicable but not later than 15 days after the change in position is detected.

(e) The owner or operator shall establish a range that indicates proper operation of the control device for each parameter monitored under paragraphs (a), (b), and (c) of this section. In order to establish the range, the information required in § 63.152(b) of this subpart shall be submitted in the Notification of Compliance Status or the operating permit application.

(Approved by the Office of Management and Budget under Control Number ______.)

§ 63.128 Transfer operations provisions—test methods and procedures.

(a) A performance test is required for determining compliance with the reduction of organic HAP emissions in § 63.126(b) for all control devices other than: Vapor balancing systems; flares; and certain boilers and process heaters listed in paragraph (c) of this section. Performance test procedures are as follows:

(1) A performance test shall consist of three runs.

(2) All testing equipment shall be prepared and installed as specified in the appropriate test methods.

(3) For control devices capable of continuous vapor processing, each run shall represent at least one complete filling period, during which liquid organic HAP's are loaded.

(4) For intermittent vapor processing systems, each run shall represent at least one complete control device cycle.

(5) Method 1 or 1A of part 60, appendix A, as appropriate, shall be used for selection of sampling sites.

(i) For an owner or operator complying with the 98-percent organic HAP reduction requirements in § 63.126(b)(1), sampling sites shall be located as specified in paragraph (a)(5)(i)(A) or (a)(5)(i)(B).

(A) Sampling sites shall be located at the inlet and outlet of the control device, except as provided in paragraph (a)(5)(i)(B).

(B) If a vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic HAP or TOC (minus methane and ethane) concentrations in all vent streams and primary and secondary fuels introduced into the boiler or process heater. A sampling site shall also be located at the outlet of the boiler or process heater.

(ii) For an owner or operator complying with the 20 parts per million by volume limit in § 63.126(b)(1), the sampling site shall be located at the outlet of the control device.

(6) The volume exhausted shall be determined using Method 2, 2A, 2C, or 2D of part 60, appendix A, as appropriate.

(7) For the purpose of determining compliance with the 20 parts per million by volume limit in § 63.126(b)(1), Method 18 or Method 25A of part 60, appendix A shall be used to measure either organic compound concentration or organic HAP concentration, except as provided in paragraph (a)(9) of this section.

(i) If Method 25A is used, the following procedures shall be used to calculate the concentration of organic compounds (C_T):

(A) The principal organic HAP in the vent stream shall be used as the calibration gas.

(B) The span value for Method 25A shall be twice the concentration being measured.

(C) Use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(D) The concentration of TOC shall be corrected to 3 percent oxygen using the procedures and equation in paragraph (a)(7)(v) of this section.

(ii) If Method 18 is used to measure the concentration of organic compounds, the organic compound concentration (C_T) is the sum of the individual components and shall be computed for each run using the following equation:

$$C_T = \sum_{j=1}^{n} C_j$$

where:

C_T=Total concentration of organic compounds (minus methane and ethane), dry basis, parts per million by volume.

C_j=Concentration of sample components "j", dry basis, parts per million by volume.

n=Number of components in the sample.

(iii) If an owner or operator uses Method 18 to compute total organic HAP concentration rather than organic compounds concentration, the equation in paragraph (a)(7)(ii) of this section shall be used except that only organic HAP species shall be summed. The list of organic HAP's is provided in § 63.104 of subpart F of this Part.

(iv) The emission rate correction factor or excess air integrated sampling and analysis procedures of Method 3B of part 60, appendix A shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the organic HAP or organic compound samples, and the samples shall be taken during the same time that the organic HAP or organic compound samples are taken.

(v) The organic compound concentration corrected to 3 percent oxygen (C_c) shall be calculated using the following equation:

$$C_c = C_T \left(\frac{17.9}{20.9 - \%O_{2d}} \right)$$

where:

C_c=Concentration of organic compounds corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_T=Total concentration of organic compounds, dry basis, parts per million by volume.

$\%O_{2d}$=Concentration of oxygen, dry basis, percent by volume.

(8) For the purpose of determining compliance with the 98-percent reduction requirement in § 63.126(b)(1), Method 18 or Method 25A of 40 CFR part 60, appendix A shall be used, except as provided in paragraph (a)(9) of this section.

(i) For the purpose of determining compliance with the reduction efficiency requirement, organic compound concentration may be measured in lieu of organic HAP concentration.

(ii) If Method 25A is used to measure the concentration of organic compounds (C_T), the principal organic HAP in the vent stream shall be used as the calibration gas.

(A) An emission testing interval shall consist of each 5-minute period during the performance test. For each interval, a reading from each measurement shall be recorded.

(B) The average organic compound concentration and the volume measurement shall correspond to the same emissions testing interval.

(C) The mass at the inlet and outlet of the control device during each testing interval shall be calculated as follows:

$$M_j = FKV_s C_T$$

where:

M_j=Mass of organic compounds emitted during testing interval j, kilograms.
V_s=Volume of air-vapor mixture exhausted at standard conditions, 20 °C and 760 millimeters mercury, standard cubic meters.
C_T=Total concentration of organic compounds (as measured) at the exhaust vent, parts per million by volume, dry basis.
K=Density, (kilograms per standard cubic meter organic HAP).
$F=10^{-6}$=Conversion factor, (cubic meters organic HAP per cubic meters air) (parts per million by volume)$^{-1}$.

(D) The organic compound mass emission rates at the inlet and outlet of the control device shall be calculated as follows:

$$E_i = \frac{\sum_{j=1}^{n} M_{ij}}{T}$$

$$E_o = \frac{\sum_{j=1}^{n} M_{oj}}{T}$$

where:

E_i, E_o=Mass flow rate of organic compounds at the inlet (i) and outlet (o) of the combustion or recovery device, kilograms per hour.
M_{ij}, M_{oj}=Mass of organic compounds at the inlet (i) or outlet (o) during testing interval j, kilograms.
T=Total time of all testing intervals, hours.
n=Number of testing intervals.

(iii) If Method 18 is used to measure organic compounds, the mass rates of organic compounds (E_i, E_o) shall be computed using the following equations:

$$E_i = K_2 \left(\sum_{j=1}^{n} C_{ij} MW_{ij} \right) Q_i$$

$$E_o = K_2 \left(\sum_{j=1}^{n} C_{oj} MW_{oj} \right) Q_o$$

where:

C_{ij}, C_{oj}=Concentration of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.
MW_{ij}, MW_{oj}=Molecular weight of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.
Q_i, Q_o=Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.
K_2=Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

(iv) Where Method 18 or 25A is used to measure the percent reduction in organic compounds, the percent reduction across the control device shall be calculated as follows:

$$R = \frac{E_i - E_o}{E_i} (100)$$

where:

R=Control efficiency of control device, percent.
E_i=Mass emitted or mass flow rate of organic compounds at the inlet to the combustion or recovery device as calculated under paragraph (a)(8) (ii)(D) or (a)(8)(iii) of this section, kilogram per hour.
E_o=Mass emitted or mass flow rate of organic compounds at the outlet of the combustion or recovery device, as calculated under paragraph (a)(8)(ii)(D) or (a)(8)(iii) of this section, kilogram per hour.

(9) The owner or operator may use any methods or data other than Method 18 or Method 25A, if the method or data has been validated according to Method 301 of 40 CFR part 63 of appendix A.

(b) When a flare is used to comply with § 63.126(b)(2), the owner or operator shall comply with the flare provisions in § 63.11 of subpart A of this part.[11]

(1) The compliance determination required by § 63.6(g) of subpart A of this part[12] shall be conducting using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions. The observation period shall be at least 2 hours and shall be conducted according to Method 22.

(i) The compliance determination shall be conducted during at least three complete loading cycles with a separate test run for each loading cycle. The observation period for detecting visible emissions shall encompass each loading cycle.

(ii) Integrated sampling to measure vent stream flow rate shall be performed continuously during each loading cycle.

(2) An owner or operator is not required to conduct a performance test to determine the percent emission reduction or outlet HAP or TOC concentration when a flare is used.

(c) An owner or operator is not required to conduct a performance test when any device specified in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section is used.

(1) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(2) A boiler or process heater burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266 subpart H, or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266 subpart H.

(3) A boiler or process heater into which the vent stream is introduced with the primary fuel.

(4) A vapor balancing system.

(d) An owner or operator using a combustion device followed by a scrubber to control a halogenated transfer vent stream in compliance with § 63.126(d) shall conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens.

(1) For an owner or operator determining compliance with the 99 percent reduction of total hydrogen

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[11] The EPA will propose subpart A in the future.

[12] See Footnote 11.

halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber. For an owner or operator complying with the 0.5 milligram per dry standard cubic meter outlet emission limit for each hydrogen halide and halogen, the sampling site shall be located at the outlet of the scrubber.

(2) Except as provided in paragraph (d)(5) of this section, Method 26 or 26A of part 60, appendix A, shall be used to determine the concentration in milligrams per dry standard cubic meter, corrected to a 3 percent oxygen basis, of the hydrogen halides and halogens that may be present in the stream.

(3) To determine compliance with the 99 percent emissions reduction limit, the emissions for any hydrogen halides and halogens present at the scrubber inlet shall be summed together. The mass emissions of the compounds present at the scrubber outlet shall be summed together. Percent reduction shall be determined by comparison of the summed inlet and outlet measurements.

(4) To demonstrate compliance with the 0.5 milligram per dry standard cubic meter emission limit, the test results must show that the concentration of each individual compound measured at the scrubber outlet, corrected to 3 percent oxygen, is below 0.5 milligram per dry standard cubic meter or is below detectable levels.

(5) The owner or operator may use any other method or data to demonstrate compliance if the method or data has been validated according to the protocol of Method 301 of 40 CFR part 63, appendix A.

(e) The owner or operator shall inspect the vapor collection system and vapor balancing system for detectable emissions greater than 500 parts per million.

(1) Method 21 of 40 CFR part 60, appendix A and visual inspections shall be used.

(2) Inspections shall be performed only while a tank truck or railcar is being loaded.

(3) Inspections shall be performed at the following times:

(i) By the compliance date and annually thereafter to demonstrate compliance with § 63.126(a)(3) and (4), or (b)(3); and

(ii) Before each performance test required to demonstrate compliance with § 63.126(b)(1).

(f) For the purposes of demonstrating vapor tightness to determine compliance with § 63.126(e)(2), the following procedures and equipment shall be used:

(1) The pressure test procedures specified in Method 27 of part 60, appendix A; and

(2) A pressure measurement device which has a precision of ±2.5 millimeters of mercury and which is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

§ 63.129 Transfer operations provisions—reporting and recordkeeping for performance tests and notification of compliance status.

(a) Each owner or operator of a Group 1 loading rack shall:

(1) Keep an up-to-date, readily accessible record of the data specified in paragraphs (a)(4) through (a)(8) of this section, as applicable.

(2) Include the data specified in paragraphs (a)(4) through (a)(8) of this section in the Notification of Compliance Status report as specified in § 63.152 of this subpart.

(3) If any subsequent performance tests are conducted after the Notification of Compliance Status has been submitted, report the data in paragraphs (a)(4) through (a)(8) of this section in the next Periodic Report as specified in § 63.152 of this subpart.

(4) Record and report the following when using a control device other than a flare to achieve a 98 weight percent reduction in organic HAP or an organic HAP concentration of 20 parts per million by volume, as specified in § 63.126(b)(1):

(i) The parameter monitoring results for thermal incinerators, catalytic incinerators, boilers or process heaters, absorbers, condensers, or carbon adsorbers specified in Table 7 of this subpart, recorded during the performance test, and averaged over the time period of the performance testing.

TABLE 7.—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOC EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME

Control device	Parameters to be monitored [a]	Recordkeeping and reporting requirements for monitored parameters
Thermal incinerator	Firebox temperature [b] [63.127(a)(1)(i)]	1. Records monitored at a frequency specified in § 63.130(a)(1). 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS [c]. 3. Record the daily average firebox temperature for each operating day [d]. 4. Report all operating days when the daily average firebox temperature is outside the range established in the NCS or operating permit—PR. [e]
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed [63.127(a)(1)(ii)].	1. Records monitored at a frequency specified in § 63.130(a)(1). 2. Record and report the upstream and downstream temperatures and the temperature difference across the catalyst bed averaged over the full period of the performance test—NCS. 3. Record the daily average upstream temperature and temperature difference across catalyst bed for each operating day [d]. 4. Report all operating days when the daily average upstream temperature is outside the range established in the NCS or operating permit—PR. 5. Report all operating days when the daily average temperature difference across the catalyst bed is outside the range established in the NCS or operating permit—PR.
Boiler or Process Heater with a design heat input capacity less than 44 megawatts.	Firebox temperature [b] [63.127(a)(3)]	1. Records monitored at a frequency specified in § 63.130(a)(1). 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS. 3. Record the daily average firebox temperature for each operating day [d]. 4. Report all operating days when the daily average firebox temperature is outside the range established in the NCS or operating permit—PR.
Flare	Presence of a flame at the pilot light [63.127(a)(2)].	1. Records monitored at a frequency specified in § 63.130(a)(1). 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS. 3. Record and report the duration of all periods when the pilot flame is absent—PR.

TABLE 7.—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOC EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME—Continued

Control device	Parameters to be monitored[a]	Recordkeeping and reporting requirements for monitored parameters
Scrubber for Halogenated Vent Streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent [63.127(a)(4)(i)], and.	1. Records monitored at a frequency specified in § 63.130(a)(1)(i). 2. Record and report the pH of the scrubber effluent averaged over the full period of the performance test—NCS. 3. Record the daily average pH of the scrubber effluent for each operating day[d]. 4. Report all operating days when the daily average pH of the scrubber effluent is outside the range established in the NCS or operating permit—PR.
	Scrubber liquid and gas flow rates [63.127(a)(4)(ii)].	1. Records monitored at a frequency specified in § 63.130(a)(1)(i). 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS. 3. Record the daily average scrubber liquid/gas ratio for each operating day[d]. 4. Report all operating days when the daily average scrubber liquid/gas ratio is outside the range established in the NCS or operating permit—PR.
Absorber[f]	Exit temperature of the absorbing liquid [63.127(b)(1)], and.	1. Records monitored at a frequency specified in § 63.130(a)(1). 2. Record and report the exit temperature of the absorbing liquid averaged over the full period of the performance test—NCS. 3. Record the daily average exit temperature of the absorbing liquid for each operating day[d]. 4. Report all operating days when the daily average exit temperature of the absorbing liquid is outside the range established in the NCS or operating permit—PR.
	Exit specific gravity [63.127(b)(1)]	1. Records monitored at a frequency specified in § 63.130(a)(1)(i). 2. Record and report the exit specific gravity averaged over the full period of the performance test—NCS. 3. Record the daily average exit specific gravity for each operating day[d]. 4. Report all operating days when the daily average exit specific gravity is outside the range established in the NCS or operating permit—PR.
Condenser[f]	Exit (product side) temperature [63.127(b)(2)].	1. Records monitored at a frequency specified in § 63.130(a)(1). 2. Record and report the exit temperature averaged over the full period of the performance test—NCS. 3. Record the daily average exit temperature for each operating day[d]. 4. Report all operating days when the daily average exit temperature is outside the range established in the NCS or operating permit—PR.
Carbon Adsorber[f]	Total regeneration stream mass flow during carbon bed regeneration cycle(s) [63.127(b)(3)], and.	1. Records of total regeneration stream mass flow for each carbon bed regeneration cycle. 2. Record and report the total regeneration stream mass flow during each carbon bed regeneration cycle during the period of the performance test—NCS. 3. Report all carbon bed regeneration cycles when the total regeneration stream mass flow is outside the range established in the NCS or operating permit—PR.
	Temperature of the carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)] [63.127(b)(3)].	1. Records of the temperature of the carbon bed after each regeneration. 2. Record and report the temperature of the carbon bed after each regeneration during the period of the performance test—NCS. 3. Report all the carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration is outside the range established in the NCS or operating permit—PR.
All Recovery Devices (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device [63.127(b)].	1. Records monitored at a frequency specified in § 63.130(a)(1)(i). 2. Record and report the concentration level or reading averaged over the full period of the performance test—NCS. 3. Record the daily average concentration level or reading for each operating day[d]. 4. Report all operating days when the daily average concentration level or reading is outside the range established in the NCS or operating permit—PR.
All Control Devices and Vapor Balancing Systems.	Presence of flow diverted to the atmosphere from the control device [63.127(d)(1)] *or.*	1. Continuous records during loading. 2. Record and report the duration of all periods when the vent stream is diverted through a bypass line—PR.
	Monthly inspections of sealed valves [63.127(d)(2)].	1. Records that monthly inspections were performed. 2. Record and report all monthly inspections that show the valves are not sealed closed or the seal has been changed.
All Vapor Collection and Vapor Balancing Systems.	Annual inspections of vapor collection or vapor balancing systems [63.127(f)].	1. Records that annual inspections were performed. 2. Record and report all annual inspections in which a leak is detected in the vapor balancing or vapor collection system.

[a] Regulatory citations are listed in brackets.

[b] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.

[c] NCS=Notification of Compliance Status described in § 63.152 of this subpart.

[d] The daily average is the average of all recorded parameter values for the operating day. If all recorded values during an operating day are within the range established in the NCS or operating permit, a statement to this effect can be recorded instead of the daily average.

[e] PR=Periodic Reports described in § 63.152 of this subpart.

[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table under "All Recovery Devices."

(ii) The percent reduction of organic HAP or TOC achieved by the control device determined as specified in § 63.128(a), or the concentration of organic HAP or TOC (parts per million by volume, by compound) determined as specified in § 63.128(a) at the outlet of the control device on a dry basis corrected to 3 percent oxygen.

(iii) For performance tests having a total duration of 3 hours or greater, the parameters shall be recorded every 15 minutes. For performance tests having a total duration of less than 3 hours, the parameters shall be recorded every 5 minutes.

(iv) For a boiler or process heater, a description of the location at which the vent stream is introduced into the boiler or process heater.

(v) For a boiler or process heater with a design capacity of 44 megawatts, or greater, the information in paragraphs (a)(4) (i) through (iii) of this section is not required.

(5) Record and report the following when using a flare to comply with § 63.126(b)(2):

(i) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.128(b) of this subpart; and

(iii) All periods during the compliance determination when the pilot flame is absent.

(6) Record and report the following when using a scrubber following a combustion device to control a halogenated vent stream, as specified in § 63.126(d):

(i) The percent reduction or scrubber outlet concentrations of hydrogen halides and halogens determined according to the procedures in § 63.128(d);

(ii) The parameter monitoring results for scrubbers specified in Table 7 of this subpart, and averaged over the time period of the performance test; and

(iii) For performance tests having a total duration of 3 hours or greater, the parameters shall be recorded every 15 minutes. For performance tests having a total duration of less than 3 hours, the parameters shall be recorded every 5 minutes.

(7) Record and report the halogen concentration in the vent stream determined according to the procedures as specified in § 63.128(d) of this subpart.

(8) An owner or operator shall document visual inspections and Method 21 leak readings made prior to the performance test as required in § 63.128(e).

(b) If an owner or operator requests approval to use a control device other than those listed in Table 7 or to monitor a parameter other than those specified in Table 7, the owner or operator shall submit a description of planned reporting and recordkeeping procedures as required under § 63.151(f) or § 63.152(e). The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Implementation Plan or permit application.

(c) For each parameter monitored according to Table 7 of this subpart or paragraph (b) of this section, the owner or operator shall establish a range for the parameter that indicates proper operation of the control device. In order to establish the range, the information required in § 63.152(b) of this subpart shall be submitted in the Notification of Compliance Status or the operating permit application.

(d) Each owner or operator shall maintain a record describing in detail the vent system used to vent each affected transfer vent stream to a control device. This document shall list all valves and vent pipes that could vent the stream to the atmosphere, thereby bypassing the control device; identify which valves are secured by car-seals or lock-and-key type configurations; and indicate the position (open or closed) of those valves which have car seals.

(Approved by the Office of Management and Budget under Control Number ________.)

§ 63.130 Transfer operations provisions—periodic recordkeeping and reporting.

(a) Each owner or operator using a control device to comply with § 63.126(b) (1) or (2) of this Subpart shall keep the following up-to-date, readily accessible records:

(1) Records of the equipment operating parameters specified to be monitored under § 63.127, and listed in Table 7 of this subpart. Operating parameter values shall be recorded in either of two ways specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section, except as provided in paragraph (a)(1)(iii). In the Notification of Compliance Status, as specified in § 63.152(b) of this Part, the owner or operator shall report which one of the two methods will be used.

(i) For loading cycles less than 3 hours, parameters shall be monitored every 5 minutes while the transfer vent stream is being vented to the control device. For loading cycles 3 hours or more, parameters shall be monitored every 15 minutes while the transfer vent stream is being vented to the control device; or

(ii) For control devices that have been operating for less than 3 hours, parameters shall be monitored every 5 minutes while the control device is operating. For control devices that have been operating for 3 hours or greater, parameters shall be monitored every 15 minutes while the control device is operating.

(iii) Owners or operators monitoring parameters listed in paragraphs (a)(1)(iii)(A), (a)(1)(iii)(B), and (a)(1)(iii)(C) must monitor at a frequency specified in paragraph (a)(1)(i).

(A) The pH of scrubber effluent as specified in § 63.127(a)(4)(i) of this subpart.

(B) The organic concentration level or organic monitor reading at the outlet of a recovery device as specified in § 63.127(b) of this subpart.

(C) The specific gravity at the exit of an absorber as specified in § 63.127(b)(1) of this subpart.

(2) Records of the daily average value of each monitored parameter for each operating day, except as provided in paragraphs (a)(2)(iii) through (a)(2)(vi) of this section.

(i) The daily average shall be calculated as the average of all values for a monitored parameter recorded during the operating day. The average shall cover periods of control device operation for parameters monitored at a frequency specified in § 63.130(a)(1)(ii). The average shall cover periods of loading for parameters monitored at a frequency specified in § 63.130(a)(1)(i).

(ii) The operating day shall be the period defined in the operating permit or the Notification of Compliance Status. It may be from midnight to midnight or another daily period.

(iii) If, all recorded values for a monitored parameter during an operating day are within the range established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were within the range rather than calculating and recording a daily average for that day.

(iv) For flares, records of the duration of all periods during which the pilot flame is absent shall be kept rather than daily averages.

(v) If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the records specified in Table 7 of this subpart shall be kept instead of the daily averages.

(vi) Records of the duration of all periods when the vent stream is diverted through bypass lines shall be kept rather than daily averages.

(3) For boilers or process heaters, records of any changes in the location at which the vent stream is introduced into the flame zone as required under the reduction of organic HAP emissions in § 63.126(b)(1).

(b) If a vapor collection system containing valves that could divert the emission stream away from the control device is used, each owner or operator of a Group 1 loading rack subject to the provisions of § 63.127(d) of this subpart shall keep up-to-date, readily accessible records of:

(1) All periods when flow bypassing the control device is indicated if flow indicators are installed under § 63.127(d)(1), along with the continuous records generated by the flow indicator, as listed in Table 7 of this subpart.

(2) Where a seal mechanism is used to comply with § 63.127(d)(2), a record

of continuous flow is not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the duration of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken, as listed in Table 7 of this subpart.

(c) Each owner or operator of a Group 1 loading rack who uses a flare to comply with § 63.126(b)(2) of this subpart shall keep up-to-date, readily accessible records of the flare pilot flame monitoring specified under § 63.127(a)(2) of this subpart.

(d) Each owner or operator of a loading rack subject to the requirements of § 63.126 shall submit to the Administrator Periodic Reports of the following information according to the schedule in § 63.152 of this subpart:

(1) Reports of all operating days when the daily average values were outside the range established in the Notification of Compliance Status or operating permit.

(2) All periods recorded under § 63.130(b)(1) when the vent stream was diverted from the control device.

(3) All times recorded under § 63.130(b)(2) when maintenance is performed on car-sealed valves, when the car seal is broken, when the bypass line valve position is changed, or the key for a lock-and-key type lock has been checked out.

(4) All periods recorded under § 63.130(a)(2)(iv) in which the pilot flame of the flare was absent.

(5) All periods recorded under § 63.130(g) in which a leak is detected in the vapor balancing or vapor collection system. A leak is detected as described in § 63.126(a)(3) and § 63.126(b)(3)(ii).

(6) All carbon bed regeneration cycles during which the parameters recorded under § 63.130(a)(2)(v) were outside the ranges established in the Notification of Compliance Status or operating permit.

(e) The owner or operator of a Group 1 loading rack shall record that the verification of DOT tank certification or Method 27 testing, required in § 63.126(e), has been performed. Various methods for the record of verification can be used, such as: A check off on a log sheet; a list of DOT serial numbers or Method 27 data; or a position description for gate security, showing that the security guard will not allow any trucks on site that do not have the appropriate documentation.

(f) Each owner or operator of a Group 1 loading rack subject to the requirements of § 63.126 shall record results of all annual Method 21 tests and visual inspections of vapor collection and vapor balancing systems, including:

(1) Date of inspection and test;

(2) Results of Method 21 monitoring, whether above or below 500 parts per million;

(3) Description of leaks if identified by visual inspection;

(4) Date of first attempt of repair for any leak detected; and

(5) Date repair is complete for any leak detected.

(g) Each owner or operator of a Group 1 or Group 2 transfer rack shall record, update annually, and maintain the information specified in paragraphs (g)(1) through (g)(3) of this section in a readily accessible location on site:

(1) An analysis demonstrating the design and actual annual throughput of the loading rack;

(2) An analysis documenting the weight-percent organic HAP of the liquid loaded. Examples of acceptable documentation include but are not limited to analyses of the material and engineering calculations.

(3) An analysis documenting the annual rack weighted average HAP vapor pressure of the loading rack.

(i) For Group 2 transfer racks that are limited to transfer of organic HAP's with vapor pressures less than 10.3 kilopascals, documentation is required of the organic HAP's (by compound) that are transferred. The rack weighted average vapor pressure does not need to be calculated.

(ii) For racks transferring one or more organic HAP's with vapor pressures greater than 10.3 kilopascals, as well as one or more organic HAP's with vapor pressures less than 10.3 kilopascals, a rack weighted average vapor pressure shall be documented. The rack weighted average HAP vapor pressure shall be weighted by the annual throughput of each chemical transferred.

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§ 63.131 Process wastewater provisions—flow diagrams and tables.

(a) The flow diagrams in this section are provided as guidance for understanding the basic interrelationships of the wastewater provisions for process units at new and existing sources. Paragraphs (a)(1) through (a)(8) of this section briefly outline the flow diagrams provided.

(1) Figure 1 provides an overview of the HON wastewater provisions,

(2) Figure 2 outlines the process for determining whether a stream meets the HON definition of a process wastewater stream,

(3) Figure 3 summarizes Group 1 and Group 2 determinations for wastewater streams containing Table 8 HAP's,

(4) Figure 4 summarizes Group 1 and Group 2 determinations for wastewater streams containing Table 9 HAP's,

(5) Figure 5 summarizes compliance options for control of wastewater streams containing Table 8 HAP's,

(6) Figure 6 summarizes compliance options for control of wastewater streams containing Table 9 HAP's,

(7) Figure 7 presents the process unit alternative compliance option for control of wastewater streams at existing sources containing Table 9 HAP's, and

(8) Figure 8 outlines compliance options for control of residuals.

(b) Because the flow diagrams are intricately related to Table 8 and Table 9 and for easy reference, these two tables are also included in this section.

[See charts at end of Part II]

TABLE 8.—ORGANIC HAP COMPOUNDS SUBJECT TO REQUIREMENTS FOR PROCESS UNITS AT NEW SOURCES

Chemical name	CAS number*
Allyl chloride	107051
Benzene	71432
1,3-Butadiene	106990
Carbon disulfide	75150
Carbon tetrachloride	56235
Cumene (isopropyl benzene)	98828
Ethylbenzene	100414
Ethyl chloride (Chloroethane)	75003
Ethylidene dichloride (1,1-Dichloroethane)	75343
Hexachlorobutadiene	87683
Hexachloroethane	67721
Hexane	110543
Methyl bromide (Bromomethane)	74839
Methyl chloride (Chloromethane)	74873
Methyl chloroform (1,1,1-Trichloroethane)	71556
Phosgene	75445
Tetrachloroethylene (Perchloroethylene)	127184
Toluene	108883
Trichloroethylene	79016
2,2,4-Trimethylpentane	540841
Vinyl chloride	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354
m-Xylene	108383
p-Xylene	106423

* CAS numbers refer to the Chemical Abstracts Service registry number assigned to specific compounds, isomers, or mixtures of compounds.

TABLE 9.—ORGANIC HAP STRIPPABILITY GROUPS AND TARGET REMOVAL EFFICIENCIES

Strippability group	Compound name	Target removal efficiency (percent)
A	See attached list of compounds.	99
B	See attached list of compounds.	95
C	See attached list of compounds.	70

Strippability group	Chemical name	CAS number*
A	Acetaldehyde	75070
	Allyl chloride	107051
	Benzene	71432
	Benzyl chloride	100447
	Biphenyl	92524
	Bromoform	75252
	1,3-Butadiene	106990
	Carbon disulfide	75150
	Carbon tetrachloride	56235
	Chlorobenzene	108907
	Chloroform	67663
	Chloroprene (2-Chloro-1,3-Butadiene).	126998
	Cumene (isopropyl benzene).	98828
	1,4-Dichlorobenzene(p)	106467
	1,3-Dichloropropene	542756
	Ethylbenzene	100414
	Ethyl chloride (Chloroethane).	75003
	Ethylene dibromide	106934
	Ethylene dichloride (1,2-Dichloroethane).	107062
	Ethylene oxide	75218
	Ethylidene dichloride (1,1-Dichloroethane).	75343
	Hexachlorobenzene	118741
	Hexachlorobutadiene	87683
	Hexachloroethane	67721
	Hexane	110543
	Methyl bromide (Bromomethane).	74839
	Methyl chloride (Chloromethane).	74873
	Methyl chloroform (1,1,1-Trichloroethane).	71556
	Methyl ethyl ketone (2-Butanone).	78933
	Methyl isobutyl ketone (Hexone).	108101
	Methyl tert-butyl ether	1634044
	Methylene chloride (Dichloromethane).	75092
	Naphthalene	91203
	2-Nitropropane	79469
	Phosgene	75445
	Propylene dichloride (1,2-Dichloropropane).	78875
	Propylene oxide	75569
	Styrene	100425
	1,1,2,2-Tetrachloroethane.	79345
	Tetrachloroethylene (Perchloroethylene).	127184
	Toluene	108883
	1,2,4-Trichlorobenzene	120821
	1,1,2-Trichloroethane	79005
	Trichloroethylene	79016
	Triethylamine	121448
	2,2,4-Trimethylpentane	540841
	Vinyl acetate	108054
	Vinyl chloride	75014
	Vinylidene chloride. (1,1-Dichloroethylene)	75354
	m-Xylene	108383
	o-Xylene	95476
	p-Xylene	106423
B	Acetonitrile	75058
	Acetophenone	98862
	Acrolein	107028
	Acrylonitrile	107131
	2-Chloroacetophenone	532274
	Dichloroethyl ether	111444
	N,N-Dimethylaniline	121697
	2,4-Dinitrophenol	51285
	Ethyl acrylate	140885
	Ethylene glycol dimethyl ether.	110714
	Ethylene glycol monobutyl ether acetate.	112072
	Isophorone	78591
	Methyl methacrylate	80626
	Nitrobenzene	98953
	Propionaldehyde	123386
	2,4,5-Trichlorophenol	95954
C	Aniline	62533
	o-Cresol	95487
	Diethyl sulfate	64675
	3,3'-Dimethylbenzidine	119937
	1,1-Dimethylhydrazine	57147
	Dimethyl sulfate	77781
	2,4-Dinitrotoluene	121142
	1,4-Dioxane (1,4-Diethyleneoxide).	123911
	Epichlorohydrin. (1-Chloro-2,3-epoxypropane).	106898
	Ethylene glycol monomethyl ether acetate.	110496
	Diethylene glycol diethyl ether.	112367
	Diethylene glycol dimethyl ether.	111966
	Ethylene glycol monoethyl ether acetate.	111159
	Methanol	67561
	o-Toluidine	95534

*CAS numbers refer to the Chemical Abstracts Service registry number assigned to specific compounds, isomers, or mixtures of compounds.

§ 63.132 Process wastewater provisions—general.

(a) The owner or operator of a SOCMI process unit at a new source shall comply with the requirements in either paragraph (a)(1) or (a)(2) of this section no later than the date specified in § 63.100 of subpart F of this part.

(1) The requirements of paragraphs (c) through (h) of this section, or

(2) The requirements of paragraphs (c), (f), and (i) of this section.

(b) The owner or operator of a SOCMI process unit at an existing source shall comply with the requirements in either paragraph (b)(1) or (b)(2) of this section no later than the date specified in § 63.100 of subpart F of this part.

(1) The requirements of paragraphs (f), (g), and (h) of this section; or

(2) The requirements of paragraphs (f) and (i) of this section.

(c) The owner or operator of a SOCMI process unit at a new source shall determine the average flow rate and average concentration of each HAP compound listed in Table 8 of this Subpart for the point of generation of each process wastewater stream generated by the process unit. Average flow rate shall be determined according to the procedures specified in § 63.144(e) of this subpart. Average concentration shall be determined according to the procedures specified in § 63.144(b) of this subpart. The requirements of this paragraph are illustrated in Figure 3 of § 63.131 of this subpart.

(1) A process wastewater stream shall be a Group 1 wastewater stream for Table 8 compounds if the average flow rate is 0.02 liter per minute or greater and the average concentration of any one of the Table 8 compounds is 10 parts per million by weight or greater.

(2) A process wastewater stream shall be a Group 2 wastewater stream for Table 8 compounds if the average flow rate is less than 0.02 liter per minute or the average concentration for each Table 8 compound is less than 10 parts per million by weight.

(d) Except as provided in paragraph (i) of this section, the owner or operator of each Group 1 stream for Table 8 compounds shall comply with the requirements of paragraphs (d)(1) through (d)(5) of this section.

(1) The treatment requirements specified in § 63.138(b) of this subpart,

(2) The requirements for waste management units specified in §§ 63.133 through 63.137 of this subpart, and

(3) The monitoring and inspection requirements of § 63.143 of this subpart.

(4) The reporting and recordkeeping requirements of §§ 63.146 and 63.147 of this subpart.

(5) The requirements in paragraph (f) of this section to determine whether each stream is Group 1 or Group 2 for Table 9 compounds.

(e) The owner or operator of each Group 2 stream for Table 8 compounds shall comply with:

(1) The recordkeeping and reporting requirements of §§ 63.146 and 63.147, respectively, of this subpart, and

(2) The requirements in paragraph (f) of this section to determine whether each stream is Group 1 or Group 2 for Table 9 compounds.

(f) The owner or operator of SOCMI process units at new and existing sources shall determine the average flow rate and total VOHAP average concentration for the point of generation of each wastewater stream generated by the process unit. Average flow rate shall be determined according to the procedures specified in § 63.144(e) of this subpart. Total VOHAP average concentration shall be determined according to the procedures specified in § 63.144(b) of this subpart. The requirements of this paragraph are illustrated in Figure 4 of § 63.131 of this subpart.

(1) A process wastewater stream shall be a Group 1 wastewater stream for Table 9 compounds if:

(i) The total VOHAP average concentration of the wastewater stream is greater than or equal to 10,000 parts per million by weight, or

(ii) The total VOHAP average concentration is greater than or equal to 1,000 parts per million by weight and the average flow rate is greater than or equal to 10 liters per minute.

(2) A process wastewater stream shall be a Group 2 wastewater stream for Table 9 compounds if:

(i) The total VOHAP average concentration is less than 1,000 parts per million by weight, or

(ii) The average flow rate is less than 10 liters per minute and the total VOHAP average concentration is less than 10,000 parts per million by weight.

(g) Except as provided in paragraph (i) of this section, the owner or operator of each Group 1 stream for Table 9 compounds shall comply with the requirements of paragraphs (g)(1) through (g)(3) of this section and with the requirements of either paragraph (g)(4) or (g)(5) of this section.

(1) The requirements for waste management units specified in §§ 63.133 through 63.137 of this subpart.

(2) The monitoring and inspection requirements of § 63.143 of this subpart.

(3) The reporting and recordkeeping requirements of §§ 63.146 and 63.147 of this subpart.

(4) The treatment requirements specified in § 63.138(c) of this subpart, or

(5) The process unit alternative specified in § 63.138(d) of this subpart.

(h) The owner or operator of each Group 2 stream for Table 9 compounds shall comply with the recordkeeping and reporting requirements of §§ 63.146 and 63.147, respectively, of this subpart.

(i) The owner or operator may elect to transfer a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream to an on-site treatment operation not owned or operated by the owner or operator of the source generating the wastewater stream or residual or to an off-site treatment operation. The owner or operator transferring the wastewater stream or residual shall:

(1) Comply with the provisions specified in §§ 63.133 through 63.137 of this subpart for each waste management unit that receives or manages a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream prior to and during shipment or transport.

(2) Ensure that the wastewater stream or residual is ultimately treated in accordance with the requirements of § 63.138(b) of this subpart if the stream or residual is Group 1 for Table 8 compounds and with the requirements of § 63.138(c) of this subpart if the stream or residual is Group 1 for Table 9 compounds.

(3) Include with the shipment or transport of each Group 1 wastewater stream or residual removed from a Group 1 wastewater stream a notice. The notice shall state that the wastewater stream or residual contains organic HAP's which are required to be managed and treated in accordance with the provisions of this subpart. When the transport is continuous (for example, discharge to a publicly-owned treatment works), the notice shall be submitted to the treatment operator at least once per year.

§ 63.133 Process wastewater provisions—wastewater tanks.

(a) For each wastewater tank that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (c) through (g) of this section and shall operate and maintain one of the following:

(1) A fixed roof and a closed vent system that routes the organic HAP vapors vented from the wastewater tank to a control device. The fixed roof, closed vent system, and control device shall meet the requirements specified in paragraph (b) of this section;

(2) A fixed roof and an internal floating roof that meets the requirements specified in § 63.119(b) of this subpart;

(3) An external floating roof that meets the requirements specified in §§ 63.119(c), 63.120(b)(5), and 63.120(b)(6) of this subpart; or

(4) An equivalent means of emission limitation. Determination of equivalence to the reduction in emissions achieved by the requirements of paragraphs (a)(1) through (a)(3) of this section will be evaluated according to § 63.102(b) of subpart F of this part. The determination will be based on the application to the Administrator which shall include the information specified in either paragraph (a)(4)(i) or (a)(4)(ii) of this section.

(i) Actual emissions tests that use full-size or scale-model wastewater tanks that accurately collect and measure all organic HAP emissions from a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or

(ii) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(b) If the owner or operator elects to comply with the requirements of paragraph (a)(1) of this section, the fixed roof shall meet the requirements of paragraph (b)(1) of this section and the closed vent system and control device shall meet the requirements of paragraph (b)(2) of this section:

(1) The fixed-roof shall meet the following requirements:

(i) The fixed roof and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed for and operated without leaks as indicated by an instrument reading of less than 500 parts per million by volume above background, as determined by Method 21 of 40 CFR part 60, appendix A.

(ii) The fixed roof and all openings shall be inspected initially, and annually thereafter, to determine compliance with paragraph (b)(1)(i) of this section in accordance with methods and procedures in § 63.145(e) of this subpart.

(iii) Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that the wastewater tank contains a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream except when it is necessary to use the opening for wastewater sampling, removal, or for equipment inspection, maintenance, or repair.

(2) The closed-vent system and control device shall be designed, operated, and inspected in accordance with the requirements of § 63.139 of this subpart.

(c) If the owner or operator elects to comply with the requirements of paragraph (a)(2) of this section, the floating roof shall be inspected according to the procedures specified in § 63.120(a)(2) and (a)(3) of this subpart.

(d) Except as provided in paragraph (e) of this section, if the owner or operator elects to comply with the requirements of (a)(3) of this section, seal gaps shall be measured according to the procedures specified in §§ 63.120(b)(2)(i) through (b)(4) and the wastewater tank shall be inspected to determine compliance with § 63.120(b)(5) and (b)(6) of this subpart.

(e) If the owner or operator determines that it is unsafe to perform the seal gap measurements specified in § 63.120 (b)(2)(i) through (b)(4) or to inspect the wastewater tank to determine compliance with § 63.120 (b)(5) and (b)(6) because the floating roof appears to be structurally unsound and poses an imminent or potential danger to inspecting personnel, the owner or operator shall comply with the requirements in either paragraph (e)(1) or (e)(2) of this section.

(1) The owner or operator shall measure the seal gaps or inspect the wastewater tank within 30 days of the determination that the floating roof is unsafe, or

(2) The owner or operator shall empty and remove the wastewater tank from service within 45 days of determining that the roof is unsafe. If the wastewater tank cannot be emptied within 45 days, 2 extensions of up to 30 additional days each may be requested from the Administrator. Each extension request shall include an explanation of why it was unsafe to perform the inspection or seal gap measurement, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the wastewater tank will be emptied as soon as possible.

(f) Except as provided in paragraph (e) of this section, each wastewater tank shall be inspected initially, and semi-annually thereafter, for improper work practices and control equipment failures in accordance with § 63.143 of this subpart.

(1) For wastewater tanks, improper work practice includes, but is not limited to, leaving open or ungasketed any access door or other opening when such door or opening is not in use.

(2) For wastewater tanks, control equipment failure includes, but is not limited to, the conditions specified in paragraphs (e)(2)(i) through (e)(2)(viii).

(i) The floating roof is not resting on either the surface of the liquid or on the leg supports.

(ii) There is liquid on the floating roof.

(iii) A rim seal is detached from the floating roof.

(iv) There are holes, tears, or other openings in the rim seal or seal fabric of the floating roof.

(v) There are visible gaps between the seal of an internal floating roof and the wall of the wastewater tank.

(vi) There are gaps between the metallic shoe seal or the liquid mounted primary seal of an external floating roof and the wall of the wastewater tank that exceed 212 square centimeters per meter of tank diameter or the width of any portion of any gap between the primary seal and the tank wall exceeds 3.81 centimeters.

(vii) There are gaps between the secondary seal of an external floating roof and the wall of the wastewater tank that exceed 21.2 square centimeters per meter of tank diameter or the width of any portion of any gap between the secondary seal and the tank wall exceeds 1.27 centimeters.

(viii) Where a metallic shoe seal is used on an external floating roof, one end of the metallic shoe does not extend into the stored liquid or one end of the metallic shoe does not extend a minimum vertical distance of 61 centimeters above the surface of the stored liquid.

(ix) A gasket, joint, lid, cover, or door is cracked, gapped, or broken.

(g) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, or when an instrument reading of 500 parts per million by volume or greater above background is measured by Method 21 of 40 CFR part 60, appendix A, first efforts at repair shall be made no later than 5 calendar days after identification, and repair shall be completed within 45 calendar days after identification.

§ 63.134 Process wastewater provisions—surface impoundments.

(a) For each surface impoundment that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (b), (c), and (d) of this section.

(b) The owner or operator shall operate and maintain on each surface impoundment a cover (e.g., air-supported structure or rigid cover) and a closed-vent system that routes the organic HAP vapors vented from the surface impoundment to a control device.

(1) The cover shall meet the following requirements:

(i) The cover and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed for and operated without leaks as indicated by an instrument reading of less than 500 parts per million by volume above background, as determined by Method 21 of 40 CFR part 60, appendix A.

(ii) The cover and all openings shall be inspected initially, and annually thereafter, to determine compliance with paragraph (b)(1)(i) of this section in accordance with methods and procedures in § 63.145(e) of this subpart.

(iii) Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the surface impoundment except when it is necessary to use the opening for sampling, removal, or for equipment inspection, maintenance, or repair.

(iv) The cover shall be used at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the surface impoundment except during removal of treatment residuals in accordance with 40 CFR 268.4 or closure of the surface impoundment in accordance with 40 CFR 264.228.

(2) The closed-vent system and control device shall be designed, operated, and inspected in accordance with § 63.139 of this subpart.

(c) Each surface impoundment shall be inspected initially, and semi-annually thereafter, for improper work practices and control equipment failures in accordance with § 63.143 of this subpart.

(1) For surface impoundments, improper work practice includes, but is not limited to, leaving open or ungasketed any access hatch or other opening when such hatch or opening is not in use.

(2) For surface impoundments, control equipment failure includes, but is not limited to, any time a seal, gasket, joint, lid, cover, or door is cracked, gapped, or broken.

(d) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, or when an instrument reading of 500 parts per million by volume or greater above background is measured by Method 21 of 40 CFR part 60, appendix A, first efforts at repair shall be made no later than 5 calendar days after identification, and repair shall be completed within 15 calendar days after identification.

§ 63.135 Process wastewater provisions—containers.

(a) For each container that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (b) through (f) of this section.

(b) The owner or operator shall operate and maintain a cover on each container used to handle, transfer, or store a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream in accordance with the following requirements:

(1) The cover and all openings (e.g., bungs, hatches, sampling ports, and pressure relief devices) shall be designed for and operated without leaks as indicated by instrument reading of less than 500 parts per million by volume above background, as determined by Method 21 of 40 CFR part 60, appendix A, except for pressure relief events related to safety considerations.

(2) The cover and all openings shall be inspected initially, and annually thereafter, to determine compliance with paragraph (b)(1) of this section in accordance with methods and

procedures in § 63.145(e) of this subpart.

(3) The cover and all openings shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the container except when it is necessary to use the opening for filling, removal, inspection, sampling, or pressure relief events related to safety considerations.

(c) A submerged fill pipe shall be used when a container is being filled with a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream.

(1) The submerged fill pipe outlet shall extend to within two fill pipe diameters of the bottom of the container while the container is being filled.

(2) The cover shall remain in place and all openings shall be maintained in a closed, sealed position except for those openings required for the submerged fill pipe and for venting of the container to prevent physical damage or permanent deformation of the container or cover.

(d) During treatment of a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, including aeration, thermal or other treatment, in a container, whenever it is necessary for the container to be open, the container shall be located within an enclosure with a closed-vent system that routes the organic HAP vapors vented from the container to a control device.

(1) The enclosure and all openings (e.g., doors, hatches) shall be designed for and operated without leaks as indicated by an instrument reading of less than 500 parts per million by volume above background, as determined by Method 21 of 40 CFR part 60, appendix A.

(2) The enclosure and all openings shall be inspected initially, and annually thereafter, to determine compliance with paragraph (d)(1) of this section in accordance with methods and procedures in § 63.145(e) of this subpart.

(3) The closed-vent system and control device shall be designed, operated, and inspected in accordance with § 63.139 of this subpart.

(e) Each container shall be inspected initially, and semi-annually thereafter, for improper work practices and control equipment failures in accordance with § 63.143 of this subpart.

(1) For containers, improper work practice includes, but is not limited to, leaving open or ungasketed any access hatch or other opening when such hatch or opening is not in use.

(2) For containers, control equipment failure includes, but is not limited to, any time a seal, gasket, joint, lid, cover, or door is cracked, gapped, or broken.

(f) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, or when an instrument reading of 500 parts per million by volume or greater above background is measured by Method 21 of 40 CFR part 60, appendix A, first efforts at repair shall be made no later than 5 calendar days after identification, and repair shall be completed within 15 calendar days after identification.

§ 63.136 Process wastewater provisions—individual drain systems.

(a) For each individual drain system that receives or manages a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraph (b) or paragraph (c) of this section.

(b) If the owner or operator elects to comply with this paragraph, the owner or operator shall operate and maintain on each opening in the individual drain system a cover and closed-vent system that routes the organic vapors vented from the individual drain system to a control device and the owner or operator shall comply with the requirements of paragraphs (b)(1) through (b)(4) of this section.

(1) The cover shall meet the following requirements:

(i) The cover and all openings (e.g., access hatches, sampling ports) shall be designed for and operated without leaks as indicated by an instrument reading of less than 500 parts per million by volume above background, as determined by Method 21 of 40 CFR part 60, appendix A.

(ii) The cover and all openings shall be inspected initially, and annually thereafter, to determine compliance with paragraph (b)(1)(i) of this section in accordance with methods and procedures in § 63.145(e) of this subpart.

(iii) The cover and all openings shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the drain system except when it is necessary to use the opening for sampling or removal, or for equipment inspection, maintenance, or repair.

(2) The closed-vent system and control device shall be designed, operated, and inspected in accordance with § 63.139 of this subpart.

(3) Each individual drain system shall be inspected initially, and semi-annually thereafter, for improper work practices and control equipment failures, in accordance with § 63.143 of this subpart.

(i) For individual drain systems, improper work practice includes, but is not limited to, leaving open or ungasketed any access hatch or other opening when such hatch or opening is not in use.

(ii) For individual drain systems, control equipment failure includes, but is not limited to, any time a seal, gasket, joint, lid, cover, or door is cracked, gapped, or broken.

(4) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, or when an instrument reading of 500 parts per million by volume or greater above background is measured by Method 21 of 40 CFR part 60, appendix A, first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 15 calendar days after identification.

(c) If the owner or operator elects to comply with this paragraph, the owner or operator shall comply with the requirements in paragraphs (c)(1) through (c)(5) of this section:

(1) Each drain shall be equipped with water seal controls, such as a p-trap or s-trap, or a tightly sealed cap or plug. For each drain using a p-trap or s-trap, the owner or operator shall ensure that water is maintained in the p-trap or s-trap. For example, a flow-monitoring device indicating positive flow from a main to a branch water line supplying a trap or water being continuously dripped into the trap by a hose could be used to verify flow of water to the trap.

(2) Each junction box shall be equipped with a cover and, if vented, shall have a vent pipe. Any vent pipe shall be at least 90 centimeters in length and shall not exceed 10.2 centimeters in diameter.

(i) Junction box covers shall have a tight seal around the edge and shall be kept in place at all times, except during inspection and maintenance.

(ii) One of the following methods shall be used to control emissions from the junction box vent pipe to the atmosphere:

(A) Equip the junction box or lift station with a system to prevent the flow of organic HAP vapors from the vent pipe to the atmosphere during normal operation. An example of such a system includes use of water seal controls on the junction box.

(B) Connect the vent pipe to a closed-vent system and control device that is designed, operated, and inspected in accordance with the requirements of § 63.139 of this subpart.

(3) Each sewer line shall not be open to the atmosphere and shall be covered or enclosed in a manner so as to have no visible gaps or cracks in joints, seals, or other emission interfaces.

(4) Equipment used to comply with paragraphs (c)(1), (c)(2), or (c)(3) of this section shall be inspected as follows:

(i) Each drain using a tightly sealed cap or plug shall be visually inspected initially, and semi-annually thereafter, to ensure caps or plugs are in place and properly installed.

(ii) Each junction box shall be visually inspected initially, and semi-annually thereafter, to ensure that the cover is in place and to ensure that the cover has a tight seal around the edge.

(iii) The unburied portion of each sewer line shall be visually inspected initially, and semi-annually thereafter, for indication of cracks or gaps that could result in air emissions.

(5) Except as provided in § 63.140 of this subpart, when a gap, or cracked or broken seal, joint, or cover is identified, first efforts at repair shall be made no later than 5 calendar days after identification, and repair shall be completed within 15 calendar days after identification.

§ 63.137 Process wastewater provisions—oil-water separators.

(a) For each oil-water separator that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (c) and (d) of this section and shall operate and maintain one of the following:

(1) A fixed roof and a closed vent system that routes the organic HAP vapors vented from the oil-water separator to a control device. The fixed roof, closed vent system, and control device shall meet the requirements specified in paragraph (b) of this section;

(2) A floating roof meeting the requirements in 40 CFR 60.693-2(a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4). For portions of the oil-water separator where it is infeasible to construct and operate a floating roof, such as over the weir mechanism, the owner or operator shall operate and maintain a fixed roof, closed vent system, and control device that meet the requirements specified in paragraph (b) of this section.

(3) An equivalent means of emission limitation. Determination of equivalence to the reduction in emissions achieved by the requirements of paragraphs (a)(1) and (a)(2) of this section will be evaluated according to § 63.102(b) of subpart F of this part. The determination will be based on the application to the Administrator which shall include the information specified in either paragraph (a)(3)(i) or (a)(3)(ii) of this section.

(i) Actual emissions tests that use full-size or scale-model oil-water separators that accurately collect and measure all organic HAP emissions from a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or

(ii) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(b) If the owner or operator elects to comply with the requirements of paragraphs (a)(1) or (a)(2) of this section, the fixed roof shall meet the requirements of paragraph (b)(1) of this section and the closed vent system and control device shall meet the requirements of paragraph (b)(2) of this section.

(1) The fixed-roof shall meet the following requirements:

(i) The fixed roof and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed for and operated without leaks as indicated by an instrument reading of less than 500 parts per million by volume above background, as determined by Method 21 of 40 CFR part 60, appendix A.

(ii) The fixed roof and all openings shall be inspected initially, and annually thereafter, to determine compliance with paragraph (b)(1)(i) of this section in accordance with methods and procedures in § 63.145(e) of this subpart.

(iii) Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that the oil-water separator contains a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream except when it is necessary to use the opening for sampling or removal, or for equipment inspection, maintenance, or repair.

(2) The closed-vent system and control device shall be designed, operated, and inspected in accordance with the requirements of § 63.139 of this subpart.

(c) If the owner or operator elects to comply with the requirements of paragraph (a)(2) of this section, seal gaps shall be measured according to the procedures specified in 40 CFR 60.696(d)(1) and the schedule specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Measurement of primary seal gaps shall be performed within 60 calendar days after installation of the floating roof and introduction of a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream and once every 5 years thereafter.

(2) Measurement of secondary seal gaps shall be performed within 60 calendar days after installation of the floating roof and introduction of a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream and once every year thereafter.

(d) Each oil-water separator shall be inspected initially, and semi-annually thereafter, for improper work practices and control equipment failures.

(1) For oil-water separators, improper work practice includes, but is not limited to, leaving open or ungasketed any access door or other opening when such door or opening is not in use.

(2) For oil-water separators, control equipment failure includes, but is not limited to, the conditions specified in paragraphs (d)(2)(i) through (d)(2)(vii) of this section.

(i) The floating roof is not resting on either the surface of the liquid or on the leg supports.

(ii) There is liquid on the floating roof.

(iii) A rim seal is detached from the floating roof.

(iv) There are holes, tears, or other openings in the rim seal or seal fabric of the floating roof.

(v) There are gaps between the primary seal and the separator wall that exceed 67 square centimeters per meter of separator wall perimeter or the width of any portion of any gap between the primary seal and the separator wall exceeds 3.8 centimeters.

(vi) There are gaps between the secondary seal and the separator wall that exceed 6.7 square centimeters per meter of separator wall perimeter or the width of any portion of any gap between the secondary seal and the separator wall exceeds 1.3 centimeters.

(vii) A gasket, joint, lid, cover, or door is cracked, gapped, or broken.

(e) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, or when an instrument reading of 500 parts per million by volume or greater above background is measured by Method 21 of 40 CFR part 60, appendix A, first efforts at repair shall be made no later than 5 calendar days after identification, and repair shall be completed within 15 calendar days after identification.

§ 63.138 Process wastewater provisions—treatment processes.

(a) Except as provided in paragraph (l) of this section, the owner or operator of a SOCMI process unit shall comply with the requirements of this section according to paragraph (a)(1) for SOCMI process units at new sources and paragraph (a)(2) for SOCMI process units at existing sources.

(1) The owner or operator of a SOCMI process unit at a new source shall comply with the requirements of paragraphs (b), (c), (e), (f), (g), (h), (i), (j), and (k) of this section.

(2) The owner or operator of a SOCMI process unit at an existing source shall comply with the requirements of paragraphs (e), (f), (g), (h), (i), (j), and (k) of this section and the requirements of either paragraph (c) or (d) of this section.

(b) For SOCMI process units at new sources, the owner or operator shall comply with the following requirements for each wastewater stream that is a Group 1 wastewater stream for Table 8 compounds. The requirements of this paragraph are illustrated in Figure 5 of § 63.131 of this subpart.

(1) Except as provided in paragraph (b)(5) of this section, the stream shall be treated by one of the following methods:

(i) Recycle the stream to a process in accordance with the requirements specified in paragraph (e) of this section. Once a wastewater stream is returned to the production process, the wastewater stream is no longer subject to this section.

(ii) Treat each individual stream using a waste management unit which meets one of the following conditions:

(A) Reduces the average concentration of each individual compound listed in Table 8 of this subpart to less than 10 parts per million by weight as determined by the procedures specified in § 63.145(b);

(B) Is a steam stripper meeting all of the design and operation specifications of paragraph (f) of this section; or

(C) Reduces by 99 percent or more the combined mass flow rate of the Table 8 compounds as determined by the procedures specified in § 63.145 (c) or (d).

(iii) Treat one Group 1 stream or a combination of one or more Group 1 wastewater streams using a treatment process which meets one of the following conditions:

(A) Reduces by 99 percent or more the combined mass flow rate of the Table 8 compounds as determined by the procedures specified in § 63.145 (c) or (d), or

(B) Is a steam stripper meeting all of the design and operation specifications of paragraph (f) of this section, or

(C) Achieves the required mass removal of Table 8 compounds determined by the procedure in § 63.145(g). The owner or operator shall demonstrate compliance with the required mass removal by calculating the actual mass removal according to the procedures in § 63.145(i) of this subpart. A series of treatment processes may be used to comply with this requirement. All wastewater collection and treatment processes and waste management units located between any two treatment processes being used to achieve the required mass removal shall comply with paragraph (h) of this section. For example, if a combination of two steam strippers is used to achieve the required mass removal, and a surface impoundment is located between the two steam strippers, then the surface impoundment shall comply with § 63.134.

(2) For each treatment process or waste management unit used to comply with the requirements of this paragraph, the owner or operator shall comply with paragraph (h) of this section for control of air emissions.

(3) For each residual removed from a Group 1 wastewater stream, the owner or operator shall comply with paragraph (g) of this section for control of air emissions.

(4) The intentional or unintentional reduction in the individual HAP or total VOHAP average concentrations of a wastewater stream by dilution of the wastewater stream with other wastewaters or materials is not allowed for the purpose of complying with the effluent concentration requirements specified in paragraph (b)(1)(ii)(A) of this section.

(5) If process changes result in a Group 1 wastewater stream for Table 8 compounds meeting the requirements of either paragraph (b)(5)(i) or (b)(5)(ii) of this section, the owner or operator need not comply with paragraph (b)(1) of this section for that stream.

(i) If the average flow rate at the point of generation is reduced to less than 0.02 liter per minute, or

(ii) If the average concentration at the point of generation for each Table 8 compound is reduced to less than 10 parts per million by weight.

(c) Except as provided in the process unit alternative in paragraph (d) of this section, the owner or operator of SOCMI process units at new and existing sources shall comply with the following requirements for each wastewater stream that is a Group 1 wastewater stream for Table 9 compounds. The requirements of this paragraph are illustrated in Figure 6 of § 63.131 of this subpart.

(1) Except as provided in paragraphs (c)(5) through (c)(7) of this section, the stream shall be treated by one of the following methods:

(i) Recycle the stream to a process in accordance with the requirements specified in paragraph (e) of this section. Once a wastewater stream is returned to the production process, the wastewater stream is no longer subject to this section.

(ii) Treat each individual stream using a waste management unit which meets one of the following conditions:

(A) Is a steam stripper meeting all of the design and operation specifications of paragraph (f) of this section;

(B) Reduces the total VOHAP mass flow rate of the stream by 99 percent or more as determined by the procedures specified in § 63.145 (c) or (d);

(C) Reduces the total VOHAP average concentration in the stream to a level less than 50 parts per million by weight as determined by the procedures specified in § 63.145(b); or

(D) Reduces the total VOHAP mass flow rate of each strippability group of organic HAP compounds in the stream by the reduction efficiency percentages specified in Table 9 of this subpart, or more, as determined by the procedures specified in § 63.145 (c) or (d).

(iii) Treat the Group 1 wastewater stream and other wastewater streams that have been aggregated or mixed for purposes of facilitating treatment using a waste management unit which meets one of the following conditions:

(A) Is a steam stripper meeting all of the design and operation specifications of paragraph (f) of this section; or

(B) Reduces the total VOHAP mass flow rate of the wastewater stream by 99 percent or more as determined by the procedures specified in § 63.145 (c) or (d); or

(C) Reduces the VOHAP mass flow rate of each strippability group of organic HAP compounds in the wastewater stream by the reduction efficiency percentages given in Table 9, or more as determined by the procedures specified in § 63.145 (c) or (d); or

(D) Achieves the required mass removal of total VOHAP determined by the procedures in § 63.145(h) of this subpart. The owner or operator shall demonstrate compliance with the required mass removal by calculating the actual mass removal according to the procedures in § 63.145(i) of this subpart. A series of treatment processes may be used to comply with this requirement. All wastewater collection and treatment processes and waste management units located between any two treatment processes being used to achieve the required mass removal shall comply with paragraph (h) of this section. For example, if a combination of two steam strippers are used to achieve the required mass removal, and a surface impoundment is located between the two steam strippers, then the surface impoundment shall comply with § 63.134 of this subpart.

(2) For each treatment process or waste management unit used to comply with the requirements of this paragraph, the owner or operator shall comply with paragraph (h) of this section for control of air emissions.

(3) For each residual removed from a Group 1 wastewater stream, the owner or operator shall comply with paragraph (g) of this section for control of air emissions.

(4) The intentional or unintentional reduction in the individual HAP or total VOHAP average concentrations of a wastewater stream by dilution of the wastewater stream with other wastewaters or materials is not allowed for the purpose of complying with the effluent concentration requirements specified in paragraph (c)(1)(ii)(C) of this section.

(5) If the sum, for the source, of the VOHAP mass flow rates of each Group 1 wastewater stream for Table 9 compounds (as determined at each stream's point of generation by the procedures in § 63.144(c) of this subpart) is less than 1 megagram per year, the owner or operator need not comply with paragraph (c)(1) of this section.

(6) If a Group 1 wastewater stream for Table 9 compounds is treated or managed in treatment processes according to the requirements in paragraphs (c)(6)(i) and (c)(6)(ii) of this section, the owner or operator need not comply with the requirements of paragraph (c)(1) of this section.

(i) The sum, for the source, of the VOHAP mass flow rates of each Group 1 wastewater stream for Table 9 compounds (as determined by the procedures specified in § 63.144(d) and in paragraphs (c)(6)(i) (A), (B), and (C) of this section) is reduced to less than 1 megagram per year.

(A) The mass flow rate of each untreated Group 1 wastewater stream is determined for that stream's point of generation.

(B) The mass flow rate of each Group 1 wastewater stream that is treated to levels less stringent than those required by paragraph (c) of this section is determined at the treatment unit outlet, but before the wastewater stream is mixed with other wastewater streams and prior to exposure to the atmosphere.

(C) The mass flow rate of each Group 1 wastewater stream treated to the levels required by paragraph (c) of this section is not included in the calculation of the total source VOHAP mass flow rate.

(ii) Each waste management unit that receives, manages, or treats the wastewater stream prior to or during treatment meets the requirements of §§ 63.133 through 63.137 of this subpart, as applicable.

(7) If process changes result in a Group 1 wastewater stream for Table 9 compounds meeting the requirements of either paragraph (c)(7)(i) or (c)(7)(ii) of this section, the owner or operator need not comply with paragraph (c)(1) of this section for that stream.

(i) The total VOHAP average concentration at the point of generation is reduced to less than 1000 parts per million by weight, or

(ii) The flow rate at the point of generation is reduced to less than 10 liters per minute and the total VOHAP average concentration at the point of generation is reduced to less than 10,000 parts per million by weight.

(d) As an alternative to the treatment requirements in paragraph (c) of this section, an owner or operator may elect to treat all wastewater streams generated within an individual SOCMI process unit at an existing source by complying with the requirements of paragraphs (d)(1) through (d)(4) of this section. The requirements of this Process Unit Alternative are illustrated in Figure 7 of § 63.131 of this Subpart.

(1) The owner or operator shall ensure that the total VOHAP average concentration of each process wastewater stream exiting the process unit is less than 10 parts per million by weight.

(2) If the total VOHAP average concentration of any individual or combined wastewater stream, as determined at the point of generation for individual streams or at the point following combination with other process wastewater from the process unit and prior to exposure to the atmosphere for combined streams, is greater than or equal to 10 parts per million by weight, the owner or operator shall comply with the requirements of either paragraph (d)(2)(i) or (d)(2)(ii) of this section.

(i) The wastewater stream shall be treated to achieve a total VOHAP average concentration of less than 10 parts per million by weight as determined by the procedures in § 63.145(b) of this subpart, or

(ii) The wastewater stream shall be recycled to the process in accordance with paragraphs (e)(1) and (e)(2) of this section. Once a wastewater stream is returned to the production process, the wastewater stream is no longer subject to this section.

(3) For each residual removed from a Group 1 wastewater stream, the owner or operator shall comply with paragraph (g) of this section for control of air emissions.

(4) For each treatment process or waste management unit that receives, manages, or treats wastewater streams generated within the process unit, the owner or operator shall comply with paragraph (h) of this section for control of air emissions.

(e) If an owner or operator elects to comply with the provisions in paragraph (b)(1)(i), (c)(1)(i), (d)(2)(ii), or (g)(1) of this section to recycle to a production process a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (e)(1) and (e)(2) of this section.

(1) The wastewater stream or residual shall not be exposed to the atmosphere during recycle or at the process unit, and

(2) Each waste management unit that receives, manages, or treats the wastewater stream or residual, prior to or during recycle, shall meet the requirements of §§ 63.133 through 63.137 of this subpart, as applicable.

(f) If an owner or operator elects to comply with paragraphs (b)(1)(ii)(B), (b)(1)(iii)(B), (c)(1)(ii)(A), or (c)(1)(iii)(A) of this section, the owner or operator shall operate and maintain a steam stripper that meets the requirements of paragraphs (f)(1) through (f)(6) of this section.

(1) Minimum active column height of 5 meters,

(2) Countercurrent flow configuration with a minimum of 10 theoretical trays,

(3) Minimum steam flow rate of 0.096 kilograms of steam per liter of wastewater feed,

(4) Minimum wastewater feed temperature of 35 °C,

(5) Maximum liquid loading of 39,900 liters per hour per square meter, and

(6) Water-cooled condenser with a maximum primary condenser outlet vapor temperature of 50 °C.

(g) For each residual removed from a Group 1 wastewater stream, the owner or operator shall control for air emissions by complying with paragraph (h) of this section and by complying with one of the provisions in paragraphs (g)(1) through (g)(3) of this section. The requirements of this paragraph are illustrated in Figure 8 of § 63.131 of this subpart.

(1) Recycle the residual to a production process in accordance with the requirements specified in paragraph (e) of this section. Once a residual is returned to the production process, the residual is no longer subject to this section.

(2) Return the residual to the treatment process.

(3) Treat the residual to destroy the total HAP mass flow rate by 99 percent or greater.

(h) For each treatment process or waste management unit that receives, manages, or treats a Group 1 wastewater stream, or residual removed from a Group 1 wastewater stream, prior to and during treatment or recycle, the owner or operator shall comply with the requirements of paragraph (h)(1), (h)(2), or (h)(3) of this section.

(1) If the treatment process or waste management unit is a wastewater tank, surface impoundment, container, individual drain system, or oil-water separator, the owner or operator shall comply with the applicable provisions in §§ 63.133 through 63.137 of this subpart.

(2) If the treatment process or waste management unit is a properly operated biological treatment unit which meets the mass removal requirements of paragraph (b)(1)(iii)(C) of this section for new sources, or paragraph (c)(1)(iii)(D) of this section for new and existing sources, as applicable, the biological treatment unit need not be covered and vented to a control device as required by the applicable provisions in §§ 63.133 through 63.137 of this subpart; or

(3) If §§ 63.133 through 63.137 of this subpart are not applicable to the treatment process or waste management unit (for example, if the treatment process is a steam stripper, air stripper, or thin-film evaporation unit), the owner or operator shall comply with the requirements in paragraphs (h)(3)(i) through (h)(3)(iv) of this section.

(i) Each opening from the treatment process or waste management unit shall be covered and vented to a closed-vent system that routes the organic vapors from the unit to a control device designed and operated in accordance with § 63.139 of this subpart;

(ii) Each cover shall be designed and operated without leaks as indicated by an instrument reading of less than 500 parts per million by volume above background, as determined by Method 21 of 40 CFR part 60, appendix A.

(iii) Each cover shall be inspected initially, and annually thereafter, by the methods specified in § 63.145(e) of this subpart.

(iv) When an instrument reading of 500 parts per million by volume or greater above background is measured by Method 21 of 40 CFR part 60, appendix A, first efforts of repair shall be made no later than 5 calendar days after identification, and repair shall be completed within 15 calendar days after identification.

(i) Except as provided in paragraph (l) of this section, the owner or operator shall demonstrate by the procedures in either paragraph (i)(1) or (i)(2) of this section that each treatment process or waste management unit used to comply with paragraph (b)(1), (c)(1), or (d) of this section achieves the conditions specified in paragraph (b)(1), (c)(1), or (d) of this section, whichever is applicable.

(1) A design analysis and supporting documentation that addresses the operating characteristics of the treatment process or waste management unit and that is based on operation at a representative wastewater stream flow rate and a VOHAP concentration under which it would be most difficult to demonstrate compliance; or

(2) Performance tests conducted using test methods and procedures that meet the requirements specified in § 63.145 of this subpart.

(j) If the treatment process or waste management unit has any openings (e.g., access doors, hatches, etc.), all such openings shall be sealed (e.g., gasketed, latched, etc.) and kept closed at all times that a Group 1 wastewater stream, or residual removed from a Group 1 wastewater stream, is in the treatment process or waste management unit, except during inspection and maintenance, and except as provided in paragraph (h)(2) of this section for properly operated biological treatment units.

(1) Each seal, access door, and all other openings shall be checked by visual inspections initially, and semiannually thereafter, to ensure that no cracks or gaps occur and that openings are closed and gasketed properly.

(2) When a gap, tear, or broken seal or gasket is identified by a visual inspection, first efforts at repair shall be no later than 5 calendar days after the leak is detected, and repair shall be completed within 15 calendar days after identification.

(k) The owner or operator of a treatment process or waste management unit that is used to comply with the provisions of this section shall monitor the unit in accordance with the applicable requirements in § 63.143 of this subpart.

(l) A treatment process, wastewater stream, or residual is in compliance with the requirements of paragraph (b), (c), or (g) of this section, as applicable, and is exempt from the requirements of paragraph (i) of this section provided that the owner or operator complies with the requirements of paragraphs (d), (e), (f), (h), (j), and (k) of this section and documents that the treatment process, wastewater stream, or residual is in compliance with one of the regulatory requirements specified in paragraphs (l)(1) through (l)(3) of this section.

(1) The treatment process is a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O;

(2) The treatment process is an industrial furnace or boiler burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(3) The wastewater stream or residual is discharged to an underground injection well for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 122.

§ 63.139 Process wastewater provisions—closed-vent systems and control devices.

(a) For each closed-vent system and control device used to comply with the provisions in §§ 63.133 through 63.138 of this Subpart, the owner or operator shall operate and maintain the closed-vent system and control device in accordance with the requirements of paragraphs (b) through (i) of this section. Whenever emissions are vented to a closed vent system or control device used to comply with the provisions of this Subpart, such system or control device shall be operating.

(b) The control device shall be designed and operated in accordance with paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section.

(1) An enclosed combustion device (including but not limited to a vapor incinerator, boiler, or process heater) shall meet the conditions in paragraph (b)(1)(i), (b)(1)(ii), or (b)(1)(iii). If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(i) Reduce the total organic compound emissions, less methane and ethane, or total organic HAP emissions vented to it by 95 weight percent or greater;

(ii) Achieve an outlet total organic compound concentration, less methane and ethane, or total organic HAP concentration of 20 parts per million by volume on a dry basis corrected to 3 percent oxygen. The owner or operator shall use either Method 18 of 40 CFR part 60, appendix A, or any other method or data that has been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A; or

(iii) Provide a minimum residence time of 0.5 seconds at a minimum temperature of 760 °C.

(2) A vapor recovery system (including but not limited to a carbon adsorption system or condenser) shall reduce the total organic compound emissions, less methane and ethane, or total organic HAP emissions vented to it with an efficiency of 95 weight percent or greater.

(3) A flare shall comply with the requirements of 40 CFR 63.11(b).[13]

(4) Any other control device used shall reduce the total organic compound emissions, less methane and ethane, or total organic HAP emissions vented to it with an efficiency of 95 weight percent or greater.

(c) Except as provided in paragraph (c)(4) of this section, an owner or operator shall demonstrate that each control device achieves the appropriate conditions specified in paragraph (b) of this section by using one of the methods specified in paragraphs (c)(1), (c)(2), or (c)(3) of this section.

(1) Performance tests conducted using the test methods and procedures specified in § 63.145 of this Subpart; or

(2) A design analysis that addresses the vent stream characteristics and control device operating parameters specified in paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(i) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(ii) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(iii) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(iv) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(v) For a carbon adsorption system that regenerates the carbon bed directly onsite in the control device such as a fixed-bed adsorber, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(vi) For a carbon adsorption system that does not regenerate the carbon bed directly onsite in the control device such as a carbon canister, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(3) For flares, the compliance determination specified in § 63.11(b) of subpart A of this part.[14]

(4) An owner or operator using any control device specified in paragraphs (c)(4)(i) through (c)(4)(iii) is exempt from the requirements in paragraphs (c)(1) through (c)(3) of this section and from the requirements in § 63.6(f) of subpart A of this part.[15]

(i) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(ii) A boiler or process heater into which the emission stream is introduced with the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator:

(A) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266 subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266 subpart H.

(d) The closed-vent system shall be designed for and operated without leaks as indicated by an instrument reading of less than 500 parts per million by volume above background, as determined by Method 21 of 40 CFR part 60, appendix A.

(e) Except as provided in paragraphs (e)(1) through (e)(3) of this section, the owner or operator shall inspect the closed vent system initially, and annually thereafter, to determine compliance with paragraph (d) of this section according to the methods and procedures specified in § 63.145(e) of this subpart.

(1) Any parts of the closed vent system that are designated, as described in § 63.147(d)(1) of this subpart, as unsafe to inspect are exempt from the inspection requirements of paragraph (e) of this section if:

(i) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (e) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(2) Any parts of the closed vent system that are designated, as described in § 63.147(d)(2) of this subpart, as difficult to inspect are exempt from the inspection requirements of paragraph (e) of this section if:

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface;

(ii) The waste management unit or treatment process that is controlled by the closed vent system and control device is an existing waste management unit or treatment process within an existing source; and

(iii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(3) Any parts of the closed vent system that are subject to monitoring requirements under the equipment leak

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[13] The EPA will propose subpart A in the future.

[14] The EPA will propose subpart A in the future.

[15] See Footnote 14.

provisions of § 63.172 of subpart H of this part shall comply with the provisions of § 63.172 of this part and are exempt from the inspection requirements of paragraph (e) of this section.

(f) Each closed-vent system and control device shall be visually inspected initially and annually thereafter, and at other times as requested by the Administrator. The visual inspection shall include inspection of ductwork, piping, and connections to covers and control devices for evidence of visible defects such as holes in ductwork or piping and loose connections.

(g) Except as provided in § 63.140 of this subpart, if visible defects in ductwork, piping, and connections to covers and control devices are observed during an inspection, or if emissions of 500 parts per million by volume or greater above background are measured by Method 21 of 40 CFR part 60, appendix A, a first effort to repair the closed-vent system and control device shall be made as soon as practicable but no later than 5 calendar days after identification. Repair shall be completed no later than 15 calendar days after identification or the visible defect is observed.

(h) Each closed vent system that contains bypass lines that could divert a vent stream away from the control device to the atmosphere shall comply with the provisions of either paragraph (h)(1) or (h)(2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, and equipment subject to § 63.167 of subpart H of this part are not subject to this paragraph.

(1) Install, calibrate, maintain, and operate a flow indicator that provides a record of vent stream flow at least once every 15 minutes. The flow indicator shall be installed at the entrance to any bypass line; or

(2) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.

(i) The owner or operator of a control device that is used to comply with the provisions of this section shall monitor the control device in accordance with § 63.143 of this subpart.

§ 63.140 Process wastewater provisions—delay of repair.

(a) Delay of repair of equipment for which emissions of 500 parts per million by volume or greater above background have been measured by Method 21 of 40 CFR part 60, appendix A, or for which an improper work practice or a control equipment failure has been identified, is allowed if the repair is technically infeasible without a process unit shutdown. Repair of this equipment shall occur by the end of the next process unit shutdown.

§§ 63.141—63.142 [Reserved]

§ 63.143 Process wastewater provisions—inspections and monitoring of operations.

(a) For each wastewater tank, surface impoundment, container, individual drain system, and oil-water separator that receives, manages, or treats a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the inspection requirements specified in Table 10 of this subpart.

TABLE 10.—MONITORING REQUIREMENTS FOR WASTE MANAGEMENT UNITS

To comply with	Inspection or monitoring requirement	Frequency	Method
Tanks:			
63.133(b)(1)(ii)	Inspect fixed roof and all openings for leaks[a]	Annually	Method 21[b].
63.133(c)	Inspect floating roof in accordance with §§ 63.120(a)(2) and (a)(3).	See § 63.120(a)(2) and (a)(3)	Visual.
63.133(d)	Measure floating roof seal gaps in accordance with §§ 63.120(b)(2)(i) through (b)(6)(ii).		See § 63.120(b)(2)(ii) through (b)(6)(ii)
	—Primary seal gaps	Once every 5 years.	
	—Secondary seal gaps	Annually.	
63.133(e)	Inspect wastewater tank for failures and improper work practices.	Semi-annually	Visual.
Surface impoundments:			
63.134(b)(1)(ii)	Inspect cover and all openings for leaks[a]	Annually	Method 21[b].
63.134(c)	Inspect surface impoundment for failures and improper work practices.	Semi-annually	Visual.
Containers:			
63.135(b)(2)	Inspect cover and all openings for leaks[a]	Annually	Method 21[b].
63.135(d)(2)	Inspect enclosure and all openings for leaks[a]	Annually	Method 21[b].
63.135(e)	Inspect container for failures and improper work practices.	Semi-annually	Visual.
Individual drain systems:[c]:			
63.136(b)(1)(ii)	Inspect cover and all openings for leaks[a]	Annually	Method 21[b].
63.136(b)(3)	Inspect individual drain system for failures and improper work practices.	Semi-annually	Visual.
63.136(c)(1)	Verify flow of water supply to all drains using water seals to ensure appropriate water levels and to prevent other conditions that reduce water seal control effectiveness.	Semi-annually	Visual.
63.136(c)(4)(i)	Inspect all drains using tightly-sealed caps or plugs to ensure caps and plugs are in place and properly installed:		
63.136(c)(4)(ii)	Inspect all junction boxes to ensure covers are in place and have tight seals around edges.	Semi-annually	Visual.
63.136(c)(4)(iii)	Inspect unburied portion of all sewer lines for cracks and gaps.	Semi-annually	Visual.
Oil-water separators:			
63.137(b)(1)(ii)	Inspect fixed roof and all openings for leaks[a]	Annually	Method 21[b]
63.137(c)	Measure floating roof seal gaps in accordance with 40 CFR 60.696(d)(1).		See 40 CFR 60.696(d)(1).
	—Primary seal gaps	Once every 5 years.	

TABLE 10.—MONITORING REQUIREMENTS FOR WASTE MANAGEMENT UNITS—Continued

To comply with	Inspection or monitoring requirement	Frequency	Method
	—Secondary seal gaps	Annually.	
63.137(d)	Inspect oil-water separator for failures and improper work practices.	Semi-annually	Visual.

[a] Leaks are detectable emissions of 500 parts per million by volume above background.
[b] Method 21 of 40 CFR Part 60, Appendix A.
[c] As specified in § 63.136(a), the owner or operator shall comply with the requirements of either § 363.136 (b) or (c).

(b) For each waste management unit or treatment process used to comply with § 63.138(b)(1), (c)(1), or (d) of this subpart, the owner or operator shall comply with the monitoring requirements specified in Table 11 of this subpart.

TABLE 11.—MONITORING REQUIREMENTS FOR TREATMENT PROCESSES

To comply with	Parameters to be monitored	Frequency	Methods
1. Effluent total VOHAP average concentration: 63.138(c)(1)(ii)(C) 63.138(d)(2)(i).	A. Measure effluent total VO concentration as a surrogate for VOHAP concentration, or	Monthly	Method 25D
	B. Measure effluent total VOHAP concentration	Monthly	Proposed Method 305, or any other applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
2. Effluent VOHAP concentration of each HAP: 63.138(b)(1)(ii)(A).	Measure VOHAP concentration of each HAP	Monthly	Proposed Method 305, or any other applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
3. Percentage reduction of total VOHAP mass flow rate: 63.138(c)(1)(ii)(B) 63.138(c)(1)(iii)(B).	A. Measure total VO concentration as a surrogate for VOHAP concentration in influent and effluent, or	Monthly	Method 25D
	B. Measure total VOHAP concentration in influent and effluent	Monthly	Proposed Method 305, or any other applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
4. Percent reduction of VOHAP mass flow rate for each strippability group of HAP's: 63.138(b)(1)(ii)(C) 63.138(b)(1)(iii)(A) 63.138(c)(1)(ii)(D) 63.138(c)(1)(iii)(C).	A. Measure VOHAP concentration of each strippability group of HAP's in influent and effluent, or	Monthly	Proposed Method 305, or any other applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
	B. Measure concentrations of speciated HAP's in influent and effluent	Monthly	Any applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
5. VOHAP mass removal of HAP's in a treatment process other than a properly operated biological treatment unit 63.138(b)(1)(iii)(C).	A. Measure VOHAP concentration of each HAP in influent and effluent of treatment process or treatment process train, or	Monthly	Proposed Method 305, or any other applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
	B. Measure concentrations of speciated HAP's in influent and effluent of treatment process or treatment process train	Monthly	Any applicable method which has been validated using section 5.1 or 5.3 of Method 301[a]
6. VOHAP mass removal of total HAP's in a treatment process other than a properly operated biological treatment unit 63.138(c)(1)(iii)(D).	Measure total VOHAP concentration in influent and effluent of treatment process or treatment process train	Monthly	Proposed Method 305, or any other applicable method which has been validated using Section 5.1 or 5.3 of Method 301[a]
7. VOHAP mass removal of each or total HAP's in a properly operated biological treatment unit 63.138(b)(1)(iii)(C) 63.138(c)(1)(iii)(D).	Appropriate parameters may be monitored upon approval from the Administrator in accordance with the requirements specified in § 63.143(c)	Monthly	Method 304, or any other method which has been approved by EPA during compliance demonstrations
8. Alternative to items 1 through 7 above.	Other parameters may be monitored upon approval from the Administrator in accordance with the requirements specified in § 63.143(d)		
9 Design steam stripper 63.138(f)(3), (4), (5), and (6).	Steam flow rate	Continuously	Integrating steam flow monitoring device equipped with a continuous recorder
	Wastewater feed mass flow rate	Continuously	Liquid flow meter installed at stripper influent and equipped with a continuous recorder

TABLE 11.—MONITORING REQUIREMENTS FOR TREATMENT PROCESSES—Continued

To comply with	Parameters to be monitored	Frequency	Methods
	Wastewater feed temperature	Continuously	Liquid temperature monitoring device installed at stripper influent and equipped with a continuous recorder
	Condenser vapor outlet temperature	Continuously	Temperature monitoring device installed at condenser vapor outlet and equipped with a continuous recorder

[a] If method(s) are used to measure organic HAP concentrations in a waste or wastewater stream, rather than measuring VOHAP concentrations in an air stream purged from a waste or wastewater stream, the correction factors listed in Table 13 may be used to adjust the results to provide a measure of the volatile portion (i.e., the VOHAP concentration) of the organic HAP's.

(c) If the owner or operator elects to comply with Item 7 in Table 11 of this subpart, the owner or operator shall request approval to monitor appropriate parameters that demonstrate proper operation of the biological treatment unit. The request shall be submitted according to the procedures specified in § 63.146(a)(3) and in either § 63.151(f) or § 63.152(e) of this subpart.

(d) If the owner or operator elects to comply with Item 8 in Table 11 of this subpart, the owner or operator shall request approval to monitor parameters other than those listed in Items 1 through 7 of Table 11. The request shall be submitted according to the procedures specified in § 63.146(a)(3) and in either § 63.151(f) or § 63.152(e) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Implementation Plan or permit application.

(e) Except as provided in paragraphs (e)(4) and (e)(5) of this section, for each closed vent system and control device used to comply with the requirements of §§ 63.133 through 63.139 of this subpart, the owner or operator shall comply with the requirements in § 63.139(e), (f), and (h) of this subpart, and with the requirements specified in paragraph (e)(1), (e)(2), or (e)(3) of this section.

(1) The owner or operator shall comply with the monitoring requirements specified in Table 12 of this subpart; or

TABLE 12.—MONITORING REQUIREMENTS FOR CONTROL DEVICES

Control device	Monitoring equipment required	Parameters to be monitored	Frequency
All control devices	1. Flow indicator installed at all bypass lines to the atmosphere and equipped with continuous recorder[b] *or.*	1. Presence of flow diverted from the control device to the atmosphere *or.*	Continuous
	2. Valves sealed closed with car-seal or lock-and-key configuration.	2. Monthly inspections of sealed valves.	Monthly
Thermal incinerator	Temperature monitoring device installed in firebox or in ductwork immediately downstream of firebox[a] and equipped with a continuous recorder[b].	Firebox temperature	Continuous
Catalytic incinerator	Temperature monitoring device installed in gas stream immediately before and after catalyst bed and equipped with a continuous recorder[b].	Temperature upstream and downstream of catalyst bed.	Continuous
Flare	Heat sensing device installed at the pilot light and equipped with a continuous recorder[b].	Presence of a flame at the pilot light.	Continuous
Boiler or process heater <44 megawatts and vent stream is not mixed with the primary fuel.	Temperature monitoring device installed in firebox[a] and equipped with continuous recorder[b].	Combustion temperature	Continuous
Condenser	Temperature monitoring device installed at condenser exit and equipped with continuous recorder[b].	Condenser exit (product side) temperature.	Continuous
Carbon adsorber (regenerative)	Integrating regeneration stream flow monitoring device having an accuracy of ±10 percent and equipped with a continuous recorder[b], *and.*	Total regeneration stream mass flow during carbon bed regeneration cycle(s).	Continuous
	Carbon bed temperature monitoring device equipped with a continuous recorder[b].	Temperature of carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)] and duration of the carbon bed steaming cycle.	Continuous
Carbon adsorber (non-regenerative).	Organic compound concentration monitoring device[c]	Organic compound concentration of adsorber exhaust.	Daily or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.

[b] "Continuous recorder" is defined in § 63.111 of this Subpart.

[c] As an alternative to conducting this monitoring, an owner or operator may replace the carbon in the carbon adsorption system with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and organic concentration in the gas stream vented to the carbon adsorption system.

(2) The owner or operator shall use an organic monitoring device installed at the outlet of the control device and equipped with a continuous recorder. Continuous recorder is defined in § 63.111 of this subpart; or

(3) The owner or operator shall request approval to monitor parameters other than those specified in paragraphs (e)(1) and (e)(2) of this section. The request shall be submitted according to the procedures specified in

§ 63.146(a)(3) and in either § 63.151(f) or § 63.152(e) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Implementation Plan or permit application.

(4) For a boiler or process heater in which all vent streams are introduced with primary fuel, the owner or operator shall comply with the requirements in § 63.139 (e), (f), and (h), but the owner or operator is exempt from the monitoring requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(5) For a boiler or process heater with a design heat input capacity of 44 megawatts or greater, the owner or operator shall comply with the requirements in § 63.139 (e), (f), and (h), but the owner or operator is exempt from the monitoring requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(f) For each parameter monitored in accordance with paragraph (c), (d), or (e) of this section, the owner or operator shall establish a range that indicates proper operation of the treatment process or closed vent system and control device. In order to establish the range, the information required in § 63.152(b)(2) of this subpart shall be submitted in the Notification of Compliance Status or the operating permit application in accordance with the requirement specified in §§ 63.146 (b)(6)(ii)(A) and (b)(7)(iii).

(g) Monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications.

§ 63.144 Process wastewater provisions—test methods and procedures to determine applicability.

(a) An owner or operator shall determine the annual wastewater quantity for a wastewater stream by one of the following methods:

(1) Selecting the highest annual quantity of wastewater managed from historical records representing the most recent 5 years of operation or, if the process unit at the source has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the source;

(2) Using the maximum design capacity of the waste management unit;

(3) Using the maximum wastewater generation rate based on the maximum design production capacity of the process unit generating the wastewater stream; or

(4) Measurements that are representative of maximum wastewater generation rates.

(b) An owner or operator shall determine the total VOHAP average concentration or average VOHAP concentration of each HAP for the point of generation of each wastewater stream by one of the following methods:

(1) Knowledge of the wastewater. The owner or operator shall provide sufficient information to document the total VOHAP average concentration or average VOHAP concentration of each HAP of each wastewater stream. Examples of information that could constitute knowledge include material balances, records of chemicals purchases, process stoichiometry, or previous test results provided the results are still representative of current operating practices at the process unit(s). If test data are used, then the owner or operator shall provide documentation describing the testing protocol and the means by which sampling variability and analytical variability were accounted for in the determination of the total VOHAP average concentration or average VOHAP concentration of each HAP for the wastewater stream.

(2) Bench-scale or pilot-scale test data. The owner or operator shall provide sufficient information to demonstrate that the bench-scale or pilot-scale test concentration data are representative of the actual total VOHAP average concentration or average VOHAP concentration of each HAP. The owner or operator shall also provide documentation describing the testing protocol, and the means by which sampling variability and analytical variability were accounted for in the determination of total VOHAP average concentration or average VOHAP concentration of each HAP for the wastewater stream.

(3) Measurements made at the point of generation or, when not feasible, measurements made at a downstream location that are corrected to point of generation values of the total VOHAP average concentration or average VOHAP concentration of each HAP in the wastewater stream in accordance with the following procedures:

(i) Collect a minimum of three samples from each wastewater stream which are representative of normal flow and concentration conditions. Where feasible, samples shall be taken from an enclosed pipe prior to the wastewater being exposed to the atmosphere. Wastewater samples shall be collected using the sampling procedures specified in 40 CFR part 60, appendix A, Method 25D.

(ii) When sampling from an enclosed pipe is not feasible, a minimum of three representative samples shall be collected in a manner to minimize exposure of the sample to the atmosphere and loss of HAP compounds prior to sampling.

(iii) Each wastewater sample shall be analyzed using one of the following test methods for determining the total VOHAP average concentration or average VOHAP concentration of each HAP in a wastewater stream:

(A) For total VOHAP average concentration or average VOHAP concentration of each HAP, proposed Method 305 shall be used. The target components shall be stripped from the wastewater samples using the procedures specified in proposed Method 305 (i.e., suspended in a polyethylene glycol/water matrix, heated to 75 °C, purged with 6 liters per minute of gaseous nitrogen, sampled for 30 minutes, etc.). The exiting purge stream containing the target components shall be collected and analyzed using the appropriate techniques described in proposed Method 305. The precision and accuracy requirements of proposed Method 305 must be met as part of the compliance requirements of this rule. Performance audit samples, if available, shall be analyzed using the procedures specified in proposed Method 305.

The following equation shall be used to calculate the VOHAP concentration of an individually-speciated compound in the wastewater from the proposed Method 305 result:

$$C_W = \left(C_C \cdot \frac{MW}{24.055} \cdot \frac{P_i}{760} \cdot \frac{293}{T_i} \cdot t \cdot L \cdot 10^3\right) / M_S$$

where:

C_W=VOHAP concentration of the individually-speciated HAP compound in the wastewater, parts per million by weight.

C_C=Concentration of compound in the gas stream, as measured by proposed Method 305, parts per million by volume on a dry basis.

M_S=Mass of sample, from proposed Method 305, milligrams.

MW=Molecular weight of the HAP compound, grams per gram-mole.

24.055=Ideal gas molar volume at 293 °Kelvin and 760 millimeters of mercury, liters per gram-mole.

P_i=Barometric pressure at the time of sample analysis, millimeters mercury absolute.

760=Reference or standard pressure, millimeters mercury absolute.

293=Reference or standard temperature, °Kelvin.

T_i=Sample gas temperature at the time of sample analysis, °Kelvin.

t=Actual purge time, from proposed Method 305, minutes.
L=Actual purge rate, from proposed Method 305, liters per minute.
10^3=Conversion factor, milligrams per gram.

Total VOHAP average concentration can be determined by summing the VOHAP concentrations of all HAP compounds in the wastewater.

(B) Method 25D of part 60, appendix A may be used instead of proposed Method 305 to measure total VO average concentration as a surrogate for total VOHAP average concentration;

(C) A test method or results from a test method that measures organic HAP concentrations in the wastewater, and that has been validated according to section 5.1 or 5.3 of Method 301 of appendix A of this part may be used. The specific requirement of proposed Method 305 to collect the sample into polyethylene glycol would not be applicable. The concentrations of the individual organic HAP compounds measured in the water may be corrected to their concentrations had they been measured by proposed Method 305, by multiplying each concentration by the compound-specific fraction measured factor in Table 13 of this subpart.

TABLE 13.—FRACTION MEASURED (F_m) AND FRACTION EMITTED (F_e) FOR HAP COMPOUNDS IN WASTEWATER STREAMS

Chemical Name	F_m	F_e
Acetaldehyde	0.724	0.469
Acetonitrile	0.739	0.354
Acetophenone	0.807	0.302
Acrolein	0.850	0.445
Acrylonitrile	0.875	0.457
Allyl chloride	1.000	0.755
Aniline	0.245	0.194
Benzene	1.000	0.721
Benzyl chloride	1.000	0.534
Biphenyl	1.000	0.550
Bromoform	0.481	0.568
1,3-Butadiene	1.000	0.888
Carbon disulfide	1.000	0.802
Carbon tetrachloride	1.000	0.832
2-Chloroacetophenone	0.841	0.375
Chlorobenzene	1.000	0.696
Chloroform	1.000	0.699
Chloroprene (2-Chloro-1,3-Butadiene)	1.000	0.604
o-Cresol	0.119	0.189
Cumene (isopropyl benzene)	1.000	0.777
1,4-Dichlorobenzene(p)	1.000	0.684
Dichloroethyl ether	0.939	0.358
1,3-Dichloropropene	1.000	0.692
N,N-Dimethylaniline	1.000	0.329
Diethyl sulfate	0.014	0.275
3,3'-Dimethylbenzidine	0.110	0.233
1,1-Dimethylhydrazine	0.486	0.189
Dimethyl sulfate	0.077	0.247
2,4-Dinitrophenol	0.014	0.297
2,4-Dinitrotoluene	0.004	0.231
1,4-Dioxane (1,4-Diethyleneoxide)	0.681	0.268
Epichlorohydrin(1-Chloro-2,3-epoxy propane)	0.859	0.293
Ethyl acrylate	0.788	0.459
Ethylbenzene	1.000	0.744
Ethyl chloride (Chloroethane)	1.000	0.772
Ethylene dibromide	1.000	0.581
Ethylene dichloride (1,2-Dichloroethane)	1.000	0.619
Ethylene oxide	0.712	0.515
Ethylidene dichloride (1,1-Dichloroethane)	1.000	0.722
Diethylene glycol diethyl ether	0.770	0.206
Ethylene glycol monobutyl ether acetate	0.100	0.328
Ethylene glycol dimethyl ether	0.680	0.389
Ethylene glycol monoethyl ether acetate	0.360	0.194
Diethylene glycol dimethyl ether	0.370	0.184
Ethylene glycol monomethyl ether acetate	0.370	0.208
Hexachlorobenzene	1.000	0.637
Hexachlorobutadiene	1.000	0.761
Hexachloroethane	1.000	0.748
Hexane	1.000	1.000
Isophorone	0.997	0.397
Methanol	0.321	0.278
Methyl bromide (Bromomethane)	0.539	0.735
Methyl chloride (Chloromethane)	1.000	0.751
Methyl chloroform (1,1,1-Trichloroethane)	1.000	0.796
Methyl ethyl ketone (2-Butanone)	0.881	0.475
Methyl isobutyl ketone (Hexone)	0.954	0.547
Methyl methacrylate	0.802	0.447
Methyl tert-butyl ether	0.911	0.570
Methylene chloride (Dichloromethane)	1.000	0.680
Naphthalene	1.000	0.561
Nitrobenzene	0.575	0.365
2-Nitropropane	0.537	0.469
Phosgene	0.868	0.945
Propionaldehyde	0.813	0.424
Propylene dichloride (1,2-Dichloropropane)	1.000	0.678
Propylene oxide	0.841	0.541
Styrene	1.000	0.671
1,1,2,2-Tetrachloroethane	1.000	0.518
Tetrachloroethylene (Perchloroethylene)	1.000	0.797
Toluene	1.000	0.731
o-Toluidine	0.267	0.198
1,2,4-Trichlorobenzene	1.000	0.652
1,1,2-Trichloroethane	0.966	0.596
Trichloroethylene	1.000	0.761
2,4,5-Trichlorophenol	0.286	0.298
Triethylamine	0.930	0.473
2,2,4-Trimethylpentane	1.000	1.000
Vinyl acetate	0.748	0.564
Vinyl chloride	1.000	0.823
Vinylidene chloride (1,1-Dichloroethylene)	1.000	0.822
m-Xylene	1.000	0.740
o-Xylene	1.000	0.712
p-Xylene	1.000	0.740

(iv) The total VOHAP average concentration or average VOHAP concentration of each HAP shall be calculated by averaging the results of the sample analyses as follows:

$$\overline{C} = \frac{1}{Q_t} \times \sum_{i=1}^{n} (Q_i)\,(C_i)$$

where:
C=Total VOHAP average concentration or average VOHAP concentration of each HAP for wastewater stream, parts per million by weight.
Q_t=Total annual wastewater quantity for wastewater stream, kilograms per year.
n=Number of wastewater samples (at least 3).
Q_i=Annual wastewater quantity for wastewater stream represented by C_i, kilograms per year.
C_i=Measured average concentration (i.e., total VOHAP average concentration or average VOHAP concentration of each HAP) in wastewater sample i, parts per million by weight.

(c) To demonstrate that the total VOHAP mass flow rate from Group 1 wastewater streams in new and existing SOCMI units is less than 1 megagram per year as specified in § 63.138(c)(5) of this subpart, an owner or operator shall determine for the source the total VOHAP mass flow rate from all Group 1 wastewater streams identified in § 63.132(f)(1) of this subpart at their points of generation by the following procedure:

(1) Determine the annual wastewater quantity for each wastewater stream using the procedures specified in paragraph (a) of this section.

(2) Determine the total VOHAP average concentration for each wastewater stream using the procedures specified in paragraph (b) of this section.

(3) Calculate the annual total VOHAP mass flow rate in each wastewater stream by multiplying the annual average flow rate of the wastewater stream times the total VOHAP average concentration.

(4) Calculate the total source VOHAP mass flow rate from all Group 1 wastewater streams by adding together the annual total VOHAP mass flow rate from each Group 1 wastewater stream.

(d) An owner or operator electing to reduce the total source VOHAP mass flow rate to less than 1 megagram per year in accordance with § 63.138(c)(6) of this subpart shall determine the total source VOHAP mass flow rate from Group 1 wastewater streams identified in § 63.138(f)(1) of this subpart by the following procedures:

(1) The annual total VOHAP mass flow rate of each Group 1 wastewater stream treated to the level of the provisions of 63.138(c) of this subpart shall not be included in the total source VOHAP mass flow rate calculation.

(2) For each untreated Group 1 wastewater stream, annual total VOHAP mass flow rate shall be determined by the procedures in paragraph (c) of this section.

(3) For each Group 1 wastewater stream treated to levels less than

required by the provisions of § 63.138(c) of this subpart, the annual total VOHAP mass flow rate shall be determined as follows:

(i) Measurement or sampling shall occur at the point of discharge of the treatment process or series of treatment processes. The point of discharge is defined as the point where the treated wastewater exits the treatment process but before it is mixed with other wastewater streams, and prior to exposure to the atmosphere.

(ii) Determine the annual wastewater quantity for each wastewater stream at the point of discharge of the treatment process or series of treatment processes using the procedures specified in paragraph (a) of this section.

(iii) Determine the total VOHAP average concentration for each wastewater stream at the point of discharge using the procedures specified in paragraph (b) of this section.

(iv) Calculate the annual total VOHAP quantity in each wastewater stream by multiplying the annual wastewater quantity of the wastewater stream times the total VOHAP average concentration.

(4) The total source VOHAP mass flow rate shall be calculated by summing the annual total VOHAP quantity from all wastewater streams as determined in paragraphs (d)(2) and (d)(3) of this section.

(e) To determine the annual average wastewater flow rate for a wastewater stream, one of the following methods shall be used:

(1) Use the maximum production capacity of the process unit, knowledge of the process, and mass balance information to either: estimate directly the average wastewater flow rate; or estimate the total annual wastewater volume and then divide total volume by 525,600 minutes in a year;

(2) Select the highest average flow rate of wastewater from historical records representing the most recent 5 years of operation or, if the process unit has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the process unit;

(3) Measure the flow rate of the wastewater for the point of generation during conditions that are representative of average wastewater generation rates.

§ 63.145 Process wastewater provisions—test methods and procedures to determine compliance.

(a) This paragraph applies to the use of all performance tests to demonstrate compliance of a treatment process or waste management unit.

(1) The test shall be conducted when the treatment process or waste management unit is operating at a representative inlet wastewater stream flow rate and VOHAP concentration under which it would be most difficult to demonstrate compliance.

(2) Operations during periods of startup, shutdown, or malfunction shall not constitute representative conditions for the purpose of a test.

(3) All testing equipment shall be prepared and installed as specified in the appropriate test methods.

(4) The owner or operator shall record all process information as is necessary to document operating conditions during the test.

(b) This paragraph applies to the use of performance tests to demonstrate compliance of a treatment process with the parts per million by weight wastewater stream concentration limits at the outlet of the treatment process.

(1) The total VOHAP average concentration shall be measured for compliance with the concentration alternatives specified in § 63.138(c)(1)(ii)(C) and (d)(1)(i) of this subpart; or the average concentration of each VOHAP shall be measured for compliance with the concentration alternatives specified in § 63.138(b)(1)(ii)(A) of this subpart.

(2) A minimum of three representative samples of the wastewater stream exiting the treatment process shall be collected and analyzed using the procedures in § 63.144(b)(3) of this subpart.

(c) This paragraph applies to the use of performance tests to demonstrate compliance of a noncombustion treatment process with the percent reduction limits for total VOHAP mass flow rate or VOHAP mass flow rate for strippability groups of HAP's.

(1) The percent reduction of total VOHAP mass flow rate shall be measured for compliance with § 63.138(c)(1)(ii)(B) or (c)(1)(iii)(B) of this subpart; or of VOHAP mass flow rate for strippability groups of HAP's for compliance with § 63.138(b)(1)(ii)(C), (b)(1)(iii)(A), (c)(1)(ii)(D), or (c)(1)(iii)(C) of this subpart.

(2) The same test method shall be used to analyze the wastewater samples from both the inlet and outlet of the treatment process.

(3) The mass flow rate of total VOHAP or of VOHAP for a strippability group of HAP's entering the treatment process (E_b) and exiting the treatment process (E_a) shall be determined by computing the product of the flow rate of the wastewater stream entering or exiting the treatment process, and the total VOHAP or strippability group VOHAP average concentration of the entering or exiting wastewater streams, respectively.

(i) The flow rate of the entering and exiting wastewater streams shall be determined using the inlet and outlet flow meters, respectively.

(ii) The total VOHAP or strippability group VOHAP average concentrations of the entering and exiting wastewater streams shall be determined using the method specified in § 63.144(b)(3)(iii) of this subpart.

(iii) Three grab samples of the entering wastewater stream shall be taken at equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs.

(iv) Three grab samples of the exiting wastewater stream shall be taken at equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs conducted over the same 3-hour period at which the mass flow rate of total VOHAP or strippability group VOHAP entering the treatment process is determined.

(v) The mass flow rates of total VOHAP or strippability group VOHAP entering and exiting the treatment process are calculated as follows:

$$E_b = \frac{K}{n \times 106} \left(\sum_{i=1}^{n} V_{bi} C_{bi} \right)$$

$$E_a = \frac{K}{n \times 106} \left(\sum_{i=1}^{n} V_{ai} C_{ai} \right)$$

where:

E_b=Mass flow rate of total VOHAP or strippability group VOHAP entering the treatment process, kilograms per hour.

E_a=Mass flow rate of total VOHAP or strippability group VOHAP exiting the treatment process, kilograms per hour.

K=Density of the wastewater stream, kilograms per cubic meter.

V_{bi}=Average volumetric flow rate of wastewater entering the treatment process during each run i, cubic meters per hour.

V_{ai}=Average volumetric flow rate of wastewater exiting the treatment process during each run i, cubic meters per hour

C_{bi}=Average concentration of total VOHAP or strippability group VOHAP in the wastewater stream entering the treatment process during each run i, parts per million by weight. This shall be the sum of the average VOHAP concentrations of all HAP's in the stream, or of all HAP's in the target strippability group that are in the stream.

C_{ai}=Average concentration of total VOHAP or strippability group VOHAP in the wastewater stream exiting the treatment process during each run i, parts per million by weight. This shall be the sum of the average VOHAP concentrations of all HAP's in the stream or of all HAP's in the target strippability group that are in the stream.

n=Number of runs.

(4) The percent reduction across the treatment process shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b} \times 100$$

where:

R=Control efficiency of the treatment process, percent.

E_b=Mass flow rate of total VOHAP or strippability group VOHAP entering the treatment process, kilograms per hour.

E_a=Mass flow rate of total VOHAP or strippability group VOHAP exiting the treatment process, kilograms per hour.

(d) This paragraph applies to the use of a performance test to demonstrate compliance of a combustion treatment process with the percent reduction limits for total VOHAP mass flow rate or VOHAP mass flow rate for strippability groups of HAP's. The percent reduction of total VOHAP mass flow rate shall be measured for compliance with § 63.138(c)(1)(ii)(B) or (c)(1)(iii)(B) of this subpart; or of VOHAP mass flow rate for strippability groups of HAP's for compliance with § 63.138(b)(1)(ii)(C), (b)(1)(iii)(A), (c)(1)(ii)(D), or (c)(1)(iii)(C) of this subpart.

(1) The mass flow rate of total VOHAP or of VOHAP for a strippability group of HAP's entering the combustion unit shall be determined by computing the product of the average flow rate of the wastewater stream entering the combustion unit, as determined by the inlet flow meter, and the total VOHAP or group VOHAP average concentration of the waste stream, as determined using the sampling procedures in § 63.144(b)(3) of this subpart.

(2) Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs conducted over at least a 3-hour period.

(3) If grab sampling techniques are used, then these grab samples shall be taken at a minimum of three equally spaced time intervals during the run.

(4) The mass flow rate of total VOHAP or strippability group VOHAP into the combustion unit is calculated as follows:

$$E_b = \frac{K}{n \times 10^6} \left(\sum_{i=1}^{n} V_i C_i \right)$$

where:

E_b=Mass flow rate of total VOHAP or strippability group VOHAP into the combustion unit, kilograms per hour.

K=Density of the waste stream, kilograms per cubic meter.

V_i=Average volumetric flow rate of waste entering the combustion unit during each run i, cubic meters per hour.

C_i=Average concentration of total VOHAP or strippability group VOHAP in the waste stream entering the combustion unit during each run i, parts per million by weight. This shall be the sum of the average VOHAP concentrations of all HAP's in the stream, or of all HAP's in the target strippability group that are in the stream.

n=Number of runs.

(5) The mass flow rate of total VOHAP or strippability group VOHAP exiting the combustion unit exhaust stack shall be determined as follows:

(i) The time period for the test shall not be less than 3 hours during which at least three 1-hour runs are conducted and be the same time period at which the mass flow rate of VOHAP entering the treatment process is determined. Each run shall represent a time-integrated composite sample corresponding to the periods when the waste feed is sampled.

(ii) A run shall consist of a 1-hour period during the test. For each run:

(A) The volume exhausted shall be determined using Method 2, 2A, 2C, or 2D from appendix A of 40 CFR part 60, as appropriate.

(B) The total VOHAP or strippability group VOHAP average concentration in the exhaust downstream of the combustion unit shall be determined using Method 18 of appendix A of 40 CFR part 60. Alternatively, any other test method validated according to the procedures in Method 301 of appendix A of this part.

(iii) The mass of total VOHAP or strippability group VOHAP emitted during each run shall be calculated as follows:

$$M_i = \frac{V}{10^6} \sum_{j=1}^{m} 0.0416\ MW_j C_j$$

where:

M_i=Mass of total VOHAP or strippability group VOHAP emitted during run i, kilograms.

V=Volume of air-vapor mixture exhausted at standard conditions, cubic meters.

C_j=VOHAP concentration of compound j measured in the exhaust, parts per million by volume.

MW_j=Molecular weight of compound j in exhaust stream, kilograms per kilogram-mole.

m=Number of HAP compounds in total or in strippability group.

0.0416=Conversion factor for molar volume, kilogram-mole per cubic meter at 293 °Kelvin and 760 millimeters mercury absolute.

(iv) The total VOHAP or strippability group VOHAP mass emission rate in the exhaust shall be calculated as follows:

$$E_a = \left(\sum_{i=1}^{n} M_i \right) / T$$

where:

E_a=Mass flow rate of total or strippability group VOHAP emitted, kilograms per hour.

M_i=Mass of total or strippability group VOHAP emitted during run i, kilograms.

T=Total time of all runs, hours.

n=Number of runs.

(6) The total VOHAP or strippability group VOHAP destruction efficiency for the combustion unit shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b} \times 100$$

where:

R = Total or strippability group VOHAP destruction efficiency for the combustion unit, percent.

E_b = Mass flow rate of total or strippability group VOHAP entering the combustion unit, kilograms per hour.

E_a = Mass flow rate of total or strippability group VOHAP exiting the combustion unit, kilograms per hour.

(e) An owner or operator shall test equipment for emissions of 500 parts per million by volume or greater required in §§ 63.133 through 63.137 and 63.139 of this subpart in accordance with the following requirements:

(1) Monitoring shall comply with Method 21 from Appendix A of 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 parts per million by volume of hydrocarbon in air); and

(ii) A mixture of methane and air at a concentration of approximately, but less than, 500 parts per million by volume methane.

(iii) The instrument may be calibrated at a higher methane concentration up to 2,000 parts per million by volume higher than the leak definition concentration for a specific piece of equipment for monitoring that piece of equipment. The instrument may not be calibrated at a methane concentration lower than the leak definition concentration for a specific piece of equipment.

(5) The background level shall be determined as set forth in Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close as possible to the interface as described in Method 21.

(7) The instrument response factors shall be considered according to paragraphs (e)(7)(i) and (e)(7)(ii) of this section.

(i) The response factors used shall be the instrument response factor determined for the predominant HAP (i.e., the HAP present at the highest percentage) at 500 parts per million by volume. The response factors may be obtained from the available literature, the instrument manufacturer, or determined for the specific instrument and HAP.

(ii) Chemical composition of individual process streams may be determined by sampling, engineering calculations, or process knowledge. A separate determination for each stream is not necessary if all or portions of the process unit can be shown to exhibit similar composition. The basis for all process stream composition determinations shall be documented as required in § 63.144(b) of this subpart.

(8) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared to 500 parts per million by volume for determining compliance.

(f) A performance test to demonstrate compliance of a vent stream control device with the organic compound reduction efficiency requirement specified under § 63.139(b) of this subpart shall use the following procedures:

(1) Sampling sites shall be selected using Method 1 or 1A from appendix A of 40 CFR part 60, as appropriate.

(2) The mass flow rate of organics entering and exiting the control device shall be determined as follows:

(i) The time period for the test shall not be less than 3 hours during which at least three runs are conducted.

(ii) A run shall consist of a 1-hour period during the test. For each run:

(A) The volume exhausted shall be determined using Method 2, 2A, 2C, or 2D from appendix A of 40 CFR part 60, as appropriate;

(B) The organic concentration in the vent stream entering and exiting the control device shall be determined using Method 18 from appendix A of 40 CFR part 60. Alternatively, any other test method validated according to the procedures in Method 301 of appendix A of this part may be used.

(iii) The mass flow rate of organics entering and exiting the control device during each run shall be calculated as follows:

$$E_a = \frac{0.0416}{10^6 \times m}\left[\sum_{j=1}^{m} V_{aj}\left(\sum_{i=1}^{n} C_{aij}\, MW_i\right)\right]$$

$$E_b = \frac{0.0416}{10^6 \times m}\left[\sum_{j=1}^{m} V_{bj}\left(\sum_{i=1}^{n} C_{bij}\, MW_i\right)\right]$$

where:

E_a=Mass flow rate of organics exiting the control device, kilograms per hour.

E_b=Mass flow rate of organics entering the control device, kilograms per hour.

V_{aj}=Average volumetric flow rate of vent stream exiting the control device during run j at standards conditions, cubic meters per hour.

V_{bj}=Average volumetric flow rate of vent stream entering the control device during run j at standards conditions, cubic meters per hour.

m=Number of runs.

C_{aij}=Organic concentration of compound i measured in the vent stream exiting the control device during run j as determined by Method 18, parts per million by volume on a dry basis.

C_{bij}=Organic concentration of compound i measured in the vent stream entering the control device during run j as determined by Method 18, parts per million by volume on a dry basis.

MW_i=Molecular weight of organic compound i in the vent stream, kilograms per kilogram-mole.

n=Number of organic compounds in the vent stream.

0.0416=Conversion factor for molar volume, kilograms-mole per cubic meter at 293 °Kelvin and 760 millimeters mercury absolute.

(4) The organic reduction efficiency for the control device shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b} \times$$

where:

R=Total organic reduction efficiency for the control device, percent.

E_b=Mass flow rate of organics entering the control device, kilograms per hour.

E_a=Mass flow rate of organics exiting the control device, kilograms per hour.

(g) A performance test to demonstrate compliance with the mass removal provision for new SOCMI process units in § 63.138(b)(1)(iii)(C) of this subpart shall consist of a determination of mass removal required to be achieved, and a determination of mass removal actually achieved. Actual mass removal and compliance shall be determined by the procedure in paragraph (i) of this section. The required mass removal for each Group 1 wastewater stream prior to combination of the streams for treatment shall be determined using the following equation:

$$RMR = \left(\frac{K}{10^6} V \sum_{j=1}^{n} \overline{C_j}\right) 0.99$$

where:

RMR=Required mass removal of VOHAP from Table 8 HAP compounds in a Group 1 wastewater stream, in kilograms per year.

K=Density of the Group 1 wastewater stream, kilograms per cubic meter.

V=Annual wastewater quantity of the Group 1 wastewater stream, cubic meters per year.

n=Number of Table 8 HAP compounds in stream.

$\tilde{C}j$=Average VOHAP concentration of each Table 8 organic HAP compound "j" in the Group 1 wastewater stream at the point of generation, parts per million by weight.

0.99=Required removal fraction of VOHAP from Table 8 compounds.

(1) The annual wastewater quantity for each Group 1 wastewater stream to be combined for treatment (V), shall be determined using the procedures specified in paragraph (a) of this section.

(2) The VOHAP average concentration of each Table 8 HAP compound ($\tilde{C}j$) in

each Group 1 wastewater stream to be combined for treatment shall be determined using the procedures specified in § 63.144(b)(3) of this subpart.

(3) The total required mass removal is calculated by adding together the required mass removal for each individual Group 1 stream to be combined for treatment.

(h) A performance test to demonstrate compliance with the mass removal provisions for new and existing SOCMI process units in § 63.138(c)(1)(iii)(D) of this subpart shall consist of a determination of mass removal required to be achieved, and a determination of mass removal actually achieved. Actual mass removal and compliance shall be determined by the procedure in paragraph (i) of this section. The required mass removal for each Group 1 wastewater stream prior to combination of the streams for treatment shall be determined using the following equation:

$$RMR = \frac{K}{10^6} V \sum_{j=1}^{n} \left(\overline{C_j} * \frac{F}{100} \right)$$

where:

RMR=Required mass removal of total VOHAP average concentration in the Group 1 wastewater stream, prior to combination with other Group 1 wastewater streams, kilograms per year.

K=Density of the Group 1 wastewater stream, kilograms per cubic meter.

V=Average wastewater flow rate for the Group 1 wastewater stream, cubic meters per year.

n=Number of organic HAP compounds in stream.

$\bar{C}_j$=Average VOHAP concentration of compound "j" in the Group 1 wastewater stream at the point of generation, parts per million by weight.

F=Required percent removal of each compound "j" (target removal efficiency from Table 9).

(1) The average wastewater flow rate for each Group 1 wastewater stream to be combined for treatment (V), shall be determined using the procedures specified in § 63.144(e) of this subpart.

(2) The average of each VOHAP concentration (Cj) in each Group 1 wastewater stream to be combined for treatment shall be determined using the procedures specified in § 63.144(b)(3) of this subpart.

(3) The total required mass removal is calculated by adding together the required mass removal for each individual Group 1 wastewater stream to be combined for treatment.

(i) For a performance test to demonstrate compliance of a treatment process with the mass removal standards, the actual mass removal of total VOHAP [for compliance with § 63.138(c)(1)(iii)(D) of this subpart] or of VOHAP from table 8 compounds [for compliance with § 63.138(b)(1)(iii)(C) of this subpart] in the wastewater stream shall be determined by the following procedure:

(1) The actual mass removal of a treatment process, or series of treatment processes other than a properly operated biological treatment unit shall be determined using the following equation:

$MR=(E_b-E_a)$

where:

MR=Actual mass removal by the treatment process or series of treatment processes of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds, kilograms per hour.

E_b=Mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds entering the treatment process or series of treatment processes, kilograms per hour.

E_a=Mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds exiting the treatment process or series of treatment processes, kilograms per hour.

(i) The mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds entering the treatment process (E_b) shall be determined using the procedures specified in paragraph (c)(3) of this section.

(ii) The mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds exiting the treatment process (E_a) shall be determined using the procedures specified in paragraph (c)(3) of this section.

(2) The actual mass removal (MR) of a treatment process which is a properly operated biological treatment unit is equal to the mass removed due to biological destruction. The mass removal should be determined using the following equation:

$MR=(E_b-E_a) * F_{bio}$

where:

MR=Actual mass removal by the treatment process or series of treatment processes of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds, kilograms per hour.

E_b=Mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds entering the treatment process or series of treatment processes, kilograms per hour.

E_a=Mass flow rate of total VOHAP for Table 9 HAP compounds or VOHAP from Table 8 HAP compounds exiting the treatment process or series of treatment processes, kilograms per hour.

F_{bio}=The fraction of VOHAP from Table 8 HAP compounds, or total VOHAP for Table 9 HAP compounds, biodegraded in a properly operated biological treatment unit. This fraction shall be determined using WATER7. The site specific biorate constants used as inputs to WATER7 shall be determined using Method 304 of appendix A of this part.

(3) Compliance with the mass removal provisions in § 63.138(b)(1)(iii)(C) or § 63.138(c)(1)(iii)(D) of this subpart is achieved when the actual mass removal of the treatment process (MR) is demonstrated to meet or exceed the total required mass removal (RMR), determined using the procedures specified in paragraphs (g) or (h) of this section, respectively.

§ 63.146 Process wastewater provisions—reporting.

(a) The owner or operator shall submit the information specified in paragraphs (a)(1) through (a)(3) of this section as part of the Implementation Plan required by § 63.151(d) of this subpart.

(1) For each SOCMI process unit at a new source, the owner or operator shall submit the information specified in Table 14a of this subpart.

(2) For each SOCMI process unit at new and existing sources, the owner or operator shall submit the information specified in Table 14b of this subpart.

TABLE 14A.—INFORMATION TO BE SUBMITTED WITH IMPLEMENTATION PLAN FOR PROCESS UNITS AT NEW SOURCES[a,b]

Process unit identification	Stream identification	VOHAP concentration (ppmw)[c]		Flow rate (lpm)[d]	Group 1 or Group 2[e]	Intend to control?[f] (Y or N)	Intended treatment technology[g]
		Average	Range				

[a] The information specified in this table must be submitted; however, it may be submitted in any format. This table presents an example format.

[b] Other requirements for the Implementation Plan are specified in § 63.151 of this subpart.

[c] Flow-weighted annual average VOHAP concentrations, at point of generation, of each HAP compound listed in Table 8 in § 63.131 of this subpart that is present in the wastewater stream, parts per million by weight (ppmw).

[d] Annual average flow rate at point of generation, liters per minute (lpm).
[e] Is the stream Group 1 or Group 2 for Table 8 compounds as determined by the procedures specified in § 63.132(c) of this subpart?
[f] Does the owner or operator intend to control the stream in accordance with the requirements specified in § 63.138(b) of this subpart, yes (Y) or no (N)?
[g] If the owner or operator intends to control the stream, what is the intended treatment technology (e.g., steam stripping, biological treatment, etc.)?

TABLE 14B.—INFORMATION TO BE SUBMITTED WITH IMPLEMENTATION PLAN FOR PROCESS UNITS AT NEW AND EXISTING SOURCES[a,b]

Process unit identification	Stream identification	Total VOHAP concentration[c] (ppmw)		Flow rate (lpm)[d]	Group 1 or Group 2[e]	Mass flow rate[f] (Mg/yr)	Intend to control[h] (Y or N)	Intended treatment technology[i] (Y or N)	Revised mass flow rate[j] (Mg/yr)
		Average	Range						
....	....	....	....	....	....	Annual Total VOHAP Mass Flow Rate (Mg/yr)[g].	....	....	Revised Annual Total VOHAP Mass Flow Rate (Mg/yr)[k]

[a] The information specified in this table must be submitted; however, it may be submitted in any format. This table presents an example format.
[b] Other requirements for the Implementation Plan are specified in § 63.151 of this subpart.
[c] Flow-weighted annual average total VOHAP concentration and expected range of total VOHAP in wastewater stream at point of generation, parts per million by weight (ppmw).
[d] Annual average flow rate at point of generation, liters per minute (lpm).
[e] Is the stream Group 1 or Group 2 for Table 9 compounds as determined by the procedures specified in § 63.132(f) of this subpart?
[f] Annual total VOHAP mass flow rate of Group 1 stream at point of generation, megagrams per year (Mg/yr).
[g] Annual total VOHAP mass flow rate from all Group 1 streams at their points of generation, summation of entries in above column, megagrams per year (Mg/yr).
[h] Does the owner or operator intend to control the stream in accordance with the requirements of § 63.138(c) or (d) of this subpart, yes (Y) or no (N)?
[i] If the owner or operator intends to control the stream, what is the intended treatment technology (e.g., steam stripping, biological treatment, etc.)?
[j] If the sum, for the source, of the total VOHAP mass flow rate of those Group 1 wastewater streams not treated to the levels required in § 63.138(c)(1) has been reduced to less than 1 megagram per year, enter the following:
—The VOHAP mass flow rate at the point of generation for each untreated Group 1 wastewater stream.
—The VOHAP mass flow rate at the outlet of the treatment process for each Group 1 wastewater stream treated less stringently than required in § 63.138(c)(1).
—Zero for each Group 2 wastewater stream and for each Group 1 wastewater stream treated to the level required in § 63.138(b)(1).
[k] Enter sum of entries in above column to demonstrate that annual total VOHAP mass flow rate for the source has been reduced below 1 megagram per year.

(3) For each waste management unit, treatment process, or closed vent system and control device used to comply with §§ 63.138(b)(1), 63.138(c)(1), 63.138(d), or 63.139 of this subpart for which the owner or operator seeks to monitor a parameter other than those specified in Table 11 or Table 12 of this subpart, the owner or operator shall submit a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(f) or § 63.152(e) of this subpart.

(b) The owner or operator shall submit the information specified in paragraphs (b)(1) through (b)(9) of this section as part of the Notification of Compliance Status required by § 63.152(b) of this subpart.

(1) For each SOCMI process unit at a new source, the owner or operator shall submit the information specified in Table 15a of this subpart.

(2) For each SOCMI process unit at new and existing sources, the owner or operator shall submit the information specified in Table 15b of this subpart.

(3) For each SOCMI process unit at an existing source for which the owner or operator elects to comply with the Process Unit Alternative specified in § 63.138(d) of this subpart, the owner or operator shall submit the information specified in Table 16 of this subpart.

(4) For each treatment process identified in Table 15a, 15b, or 16 of this subpart that receives, manages, or treats a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall submit the information specified in Table 17a of this subpart.

TABLE 15a.—INFORMATION TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS FOR PROCESS UNITS AT NEW SOURCES[a,b]

Process unit identification code	Stream identification code	VOHAP concentration (ppmw)[c]		Flow rate (1pm)[d]	Group 1 or Group 2[e]	Compliance approach[f]	Treatment process(es) identification code[g]	Waste management unit(s) identification[h]
		Average	Range					

[a] The information specified in this table must be submitted; however, it may be submitted in any format. This table presents an example format.
[b] Other requirements for the Notification of Compliance Status are specified in § 63.152(b) of this Subpart.
[c] Flow-weighted annual average VOHAP concentrations, at point of generation, of each HAP compound listed in Table 8 in § 63.131 of this subpart that is present in the wastewater stream, parts per million by weight (ppmw).
[d] Annual average flow rate at point of generation, liters per minute (lpm).
[e] Is the stream Group 1 or Group 2 for Table 8 compounds as determined by the procedures specified in § 63.132(c) of this Subpart?
[f] If stream is being controlled in accordance with the requirements of § 63.138(b), identify the subparagraph in § 63.138(b) with which the owner or operator has elected to comply. For example, if the owner or operator elects to recycle the stream to a production process, the appropriate subparagraph is § 63.138(b)(1)(i).
[g] If the stream is being treated in accordance with the requirements of § 63.138(b), give identification code of treatment unit(s) treating stream. Identification codes should correspond to entries in Table 17a.
[h] For each Group 1 wastewater stream, identify the waste management unit(s) receiving or managing the stream. Identification codes should correspond to entries in Table 17b.

TABLE 15B.—INFORMATION TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS FOR PROCESS UNITS AT NEW AND EXISTING SOURCES[a, b]

Process unit identification	Stream identification	Total VOHAP Concentration (ppmw)[c]		Flow rate (lpm)[d]	Group 1 or Group 2[e]	Mass flow rate[f] (Mg/yr)	Compliance approach[h]	Treatment process identification[i]	Revised mass flow rate[j] (Mg/yr)	Waste management unit identification[l]
		Average	Range							
						Annual Total VOHAP Mass Flow Rate[g] (Mg/yr)			Revised Annual Total VOHAP Mass Flow Rate[k] (Mg/yr)	

[a] The information specified in this table must be submitted; however, it may be submitted in any format. This table presents an example format.

[b] Other requirements for the Notification of Compliance Status are specified in § 63.152(b) of this Subpart.

[c] Flow-weighted annual average total VOHAP concentration and expected range of total VOHAP in wastewater stream at point of generation, parts per million by weight (ppmw).

[d] Annual average flow rate at point of generation, liters per minute (lpm).

[e] Is the stream Group 1 or Group 2 for Table 9 compounds as determined by the procedures specified in § 63.132(f)?

[f] Annual total VOHAP mass flow rate of Group 1 stream at point of generation, megagrams per year (Mg/yr).

[g] Annual total VOHAP mass flow rate from all Group 1 streams at their points of generation, summation of entries in above column, megagrams per year (Mg/yr).

[h] If the stream is being controlled in accordance with the requirements of § 63.138(c), identify the subparagraph in § 63.138(c) with which the owner or operator has elected to comply. For example, if the owner or operator elects to reduce the total VOHAP mass flow rate of an individual stream by 99 percent, the appropriate subparagraph is § 63.138(c)(1)(ii)(B).

[i] If stream is being treated in accordance with § 63.138(c), give identification code of treatment unit(s) treating stream. Identification codes should correspond to entries in Table 17a.

[j] If the sum, for the source, of the total VOHAP mass flow rates of those Group 1 wastewater streams not treated to the levels required in § 63.138(c)(1) has been reduced to less than 1 megagram per year, enter the following:

—The VOHAP mass flow rate at the point of generation for each untreated Group 1 wastewater stream.

—The VOHAP mass flow rate at the outlet of the treatment process for each Group 1 wastewater stream treated less stringently than required in § 63.138(b)(1).

—Zero for each Group 2 wastewater stream and for each Group 1 wastewater stream treated to the level required in § 63.138(c)(1).

[k] Enter sum of entries in above column to demonstrate that annual total VOHAP mass flow rate for the source has been reduced below 1 megagram per year.

[l] For each Group 1 wastewater stream, identify the waste management unit(s) receiving or managing the stream. Identification codes should correspond to entries in Table 17b.

TABLE 16.—INFORMATION TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS FOR PROCESS UNITS AT EXISTING SOURCES COMPLYING WITH PROCESS UNIT ALTERNATIVE IN § 63.138(d)[a,b,c]

Process Unit identification	Stream identification	Total VOHAP concentration[d] (ppmw)		Flow[e] Rate (lpm)	Treatment process identification[f]	Waste management unit identification[g]
		Average	Range			

[a] The information specified in this table shall be provided for each wastewater stream generated by the process unit to which this alternative provision is being applied.

[b] The information specified in this table must be submitted; however, it may be submitted in any format. This table presents an example format.

[c] Other requirements for the Notification of Compliance Status are specified in § 63.152(b) of this Subpart.

[d] Flow-weighted annual average and expected range of total VOHAP concentration of individual or combined stream before exposure to the atmosphere and before combination with streams other than process wastewater from the specific process unit, parts per million by weight (ppmw).

[e] Annual average flow rate of combined or individual wastewater stream, liters per minute (lpm).

[f] If stream is being controlled, give identification code(s) of treatment unit(s) treating stream. Identification codes should correspond to entries in Table 17a.

[g] For each wastewater stream generated within the process unit, identify the waste management unit(s) receiving or managing the stream. Identification codes should correspond to entries in Table 17b.

TABLE 17a.—INFORMATION FOR TREATMENT PROCESSES TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS[a,b]

Treatment process identification[c]	Description[d]	Wastewater stream(s) treated[e]	Monitoring parameters[f]

[a] The information specified in this table must be submitted; however, it may be submitted in any format. This table presents an example format.

[b] Other requirements for the Notification of Compliance Status are specified in § 63.152(b) of this Subpart.

[c] Identification codes should correspond to those listed in Tables 14 through 16.

[d] Description of treatment process.

[e] Stream identification code for each wastewater stream treated by each treatment unit. Identification codes should correspond to entries listed in Tables 14 through 16.

[f] Parameter(s) to be monitored or measured in accordance with Table 11 in § 63.143 of this Subpart.

(5) For each waste management unit identified in Table 15a, 15b, or 16 of this subpart that receives or manages a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall submit the information specified in Table 17b of this subpart.

TABLE 17b.—INFORMATION FOR WASTE MANAGEMENT UNITS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS[a, b]

Waste management unit identification[c]	Description[d]	Wastewater stream(s) received or managed[e]

TABLE 17b.—INFORMATION FOR WASTE MANAGEMENT UNITS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS[a, b]—Continued

Waste management unit identification[c]	Description[d]	Wastewater stream(s) received or managed[e]

[a] The information specified in this table must be submitted; however, it may be submitted in any format. This table presents an example format.

[b] Other requirements for the Notification of Compliance Status are specified in § 63.152(b) of this Subpart.

[c] Identification codes should correspond to those listed in Tables 14 through 16.

[d] Description of waste management unit.

[e] Stream identification code for each wastewater stream received or managed by each waste management unit. Identification codes should correspond to entries listed in Tables 14 through 16.

TABLE 18.—INFORMATION ON RESIDUALS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS[a b]

Residual identification[c]	Residual description[d]	Wastewater stream identifi-cation[e]	Treatment process[f]	Fate[g]	Control device identification code	Control device description[h]	Control device efficiency[i]

[a] The information specified in this table must be submitted; however, it may be submitted in any format. This table presents an example format.

[b] Other requirements for the Notification of Compliance Status are specified in §63.152(b) of this subpart.

[c] Name or identification code of residual removed from Group 1 wastewater stream.

[d] Description of residual, e.g., stream stripper A–13 overhead condensates.

[e] Identification of stream from which residual is removed.

[f] Treatment process from which residual originates.

[g] Indicate whether residual is returned to production process, residual is returned to waste management unit or treatment process, or VOHAP content of residual is destroyed by 99 percent.

[h] If the fate of the residual is such that the VOHAP content is destroyed by 99 percent, give description of device used for HAP destruction.

[i] If the fate of the residual is such that the VOHAP content is destroyed by 99 percent, provide an estimate of control device efficiency and attach substantiation in accordance with §63.146(b)(9) of this Subpart.

(6) For each residual removed from a Group 1 wastewater stream, the owner or operator shall submit the information specified in Table 18 of this subpart.

(7) For each closed vent system and control device used to comply with §§ 63.133 through 63.139 of this subpart, the owner or operator shall submit the information specified in paragraphs (b)(7)(i) and (b)(7)(ii) of this section.

(i) For each flare, the owner or operator shall submit the information specified in paragraphs (b)(7)(i)(A) through (b)(7)(i)(C).

(A) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(B) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.139(c)(3) of this Subpart; and

(C) All periods during the compliance determination when the pilot flame is absent.

(ii) For each control device other than a flare, the owner or operator shall submit the information specified in paragraph (b)(7)(ii)(A) and in either paragraph (b)(7)(ii) (B) or (C) of this section.

(A) The information on parameter ranges specified in § 63.152(b)(2) of this Subpart for the applicable parameters specified in Table 12 of this Subpart, unless the parameter range has already been established in the operating permit; and either

(B) The design analysis specified in § 63.139(c)(2) of this Subpart; or

(C) Results of the performance test specified in § 63.139(c)(1) of this Subpart. Performance test results shall include operating ranges of key process and control parameters during the performance test; the value, averaged over the period of the performance test, of each parameter identified in the Implementation Plan or operating permit as being monitored in accordance with § 63.143 of this Subpart; and applicable supporting calculations.

(8) For each waste management unit or treatment process used to comply with § 63.138 (b)(1), (c)(1), or (d) of this Subpart, the owner or operator shall submit the information specified in paragraphs (b)(8)(i) through (b)(8)(iii) of this section.

(i) For Items 1 through 6 in Table 11 of this Subpart, the owner or operator shall submit the results of the initial measurement of the applicable parameters specified in Table 11 of this Subpart and any applicable supporting calculations. For example, for Item 3 in Table 11, the owner or operator would include a calculation of percent reduction of total VOHAP mass flow rate in accordance with the procedures specified in § 63.145(c) of this subpart.

(ii) For Items 7 and 8 in Table 11 of this subpart, the owner or operator shall submit the information specified in paragraphs (b)(8)(ii) (A) and (B) of this section.

(A) The information on parameter ranges specified in § 63.152(b)(2) of this Subpart for the parameters approved by the Administrator, unless the parameter range has already been established in the operating permit.

(B) Results of the initial measurements of the parameters approved by the Administrator and any applicable supporting calculations.

(iii) For Item 9 in Table 11 of this Subpart, the owner or operator shall submit the information on parameter ranges specified in § 63.152(b)(2) of this Subpart for the parameters specified in Item 9 of Table 11, unless the parameter range has already been established in the operating permit.

(9) Except as provided in paragraph (b)(9)(iii) of this section, for each waste management unit or treatment process used to comply with § 63.138(b)(1), (c)(1), (d), or (g)(3) of this Subpart, the owner or operator shall submit the information specified in either paragraph (b)(9)(i) or (b)(9)(ii) of this section.

(i) The design analysis and supporting documentation specified in § 63.138(i)(1) of this Subpart.

(ii) Results of the performance test specified in § 63.138(i)(2) of this Subpart. Performance test results shall include operating ranges of key process and control parameters during the performance test; the value, averaged over the period of the performance test, of each parameter identified in the Implementation Plan or operating permit as being monitored in accordance with § 63.143 of this Subpart; and applicable supporting calculations.

(iii) If the owner or operator elects to use one of the technologies specified in

§ 63.138(l) of this Subpart, the owner or operator is exempt from the requirements specified in paragraphs (b)(9)(i) and (b)(9)(ii) of this section.

(c) For each waste management unit that receives, manages, or treats a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall submit as part of the next Periodic Report required by § 63.152(c) the information specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Results of each inspection required by § 63.143(a) of this Subpart in which a control equipment failure was identified. Control equipment failure is defined for each waste management unit in §§ 63.133 through 63.137. Each Periodic Report shall include the date of the inspection, identification of each waste management unit in which a control equipment failure was detected, description of the failure, and description of the nature of and date the repair was made.

(2) Results of each annual inspection when an instrument reading of 500 parts per million by volume or greater above background is measured by Method 21 of 40 CFR part 60, appendix A.

(d) Except as provided in paragraph (g) of this section, for each waste management unit or treatment process used to comply with § 63.138(b)(1), (c)(1), or (d) of this subpart, the owner or operator shall submit as part of the next Periodic Report required by § 63.152(c) the information specified in paragraphs (d)(1) through (d)(3) of this section for the monitoring required by § 63.143(b) of this Subpart.

(1) For Items 1 through 6 in Table 11, the owner or operator shall submit the results of the measurements of the appropriate parameters specified in Table 11 and any applicable supporting calculations in which the results indicate that the waste management unit or treatment process failed to meet the requirements specified in the applicable paragraphs cited in column 1 of Table 11.

(2) For Item 7 in Table 11, the owner or operator shall submit the information specified in either paragraph (d)(2)(i) or (d)(2)(ii) of this section.

(i) For each parameter approved by the Administrator and required by the Administrator to be monitored continuously, the owner or operator shall submit the monitoring results for each operating day during which the daily average value of the monitored parameter was outside the range established in the Notification of Compliance Status or operating permit.

(ii) For each parameter approved by the Administrator for which monitoring is not required by the Administrator to be continuous, the owner or operator shall submit the results of measurements that indicate that the biological treatment unit failed to meet the requirements specified in the applicable paragraphs cited in column 1 of Table 11.

(3) For Item 9 in Table 11 of this Subpart, the owner or operator shall submit the monitoring results for each operating day during which the daily average value of any monitored parameter specified in Item 9 of Table 11 of this Subpart was outside the range established in the Notification of Compliance Status or operating permit.

(e) Except as provided in paragraph (g) of this section, for each closed vent system and control device used to comply with §§ 63.133 through 63.139 of this subpart, the owner or operator shall submit as part of the next Periodic Report required by § 63.152(c) the information specified in either paragraph (e)(1) or (e)(2) of this section.

(1) The information specified in Table 19 of this Subpart, or

TABLE 19.—PERIODIC REPORTING REQUIREMENTS FOR CONTROL DEVICES USED TO COMPLY WITH §§ 63.133–63.139

Control device	Reporting requirements
Thermal incinerator	1. Report all operating days when the daily average[b] firebox temperature is outside the range established in the NCS[a] or operating permit.
Catalytic incinerator	1. Report all operating days when the daily average[b] upstream temperature is outside the range established in the NCS or operating permit. 2. Report all operating days when the daily average[b] temperature difference across the catalyst bed is outside the range established in the NCS or operating permit.
Boiler or process heater with a design heat input capacity less than 44 megawatts and vent stream is not mixed with the primary fuel.	1. Report all operating days when the daily average[b] firebox temperature is outside the range established in the NCS or operating permit.
Flare	1. Report the duration of all periods when the pilot flame is absent.
Condenser	1. Report all operating days when the daily average[b] exit temperature is outside the range established in the NCS or operating permit.
Carbon adsorber	1. Report all carbon bed regeneration cycles when the total regeneration stream mass flow is outside the range established in the NCS or operating permit. 2. Report all carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration is outside the range established in the NCS or operating permit.
All control devices	1. Report all periods when the vent stream is diverted through a bypass line, or 2. Report all monthly inspections that show the valves are not sealed closed or the seal has been changed.

[a] NCS=Notification of Compliance Status described in § 63.152 of this Subpart.

[b] The daily average is the average of all values recorded during the operating day, as specified in § 63.147(f) of this Subpart.

(2) If the owner or operator elects to comply with § 63.143(e)(2), i.e., an organic monitoring device installed at the outlet of the control device, the owner or operator shall submit the monitoring results for each operating day during which the daily average concentration level or reading is outside the range established in the Notification of Compliance Status or operating permit.

(f) For each closed vent system that contains bypass lines that could divert a vent stream away from a control device used to comply with §§ 63.133 through 63.139 of this subpart and to the atmosphere, the owner or operator shall include the information specified in paragraphs (f)(1) and (f)(2) of this section in the next Periodic Report required by § 63.152(c) of this subpart.

(1) The owner or operator shall identify all periods when the vent stream was diverted from the control device through a bypass line.

(2) If a seal mechanism is used to secure the bypass line in accordance with § 63.139(h)(2), the owner or operator shall identify all periods when the seal mechanism was broken, the bypass line valve position was changed,

or the key to unlock the bypass line valve was checked out.

(g) Where the owner or operator obtains approval to use a control device other than one for which monitoring requirements are specified in § 63.143 of this subpart, or to monitor parameters other than those specified in Table 11 or 12 of this subpart, the Administrator will specify appropriate reporting requirements.

(h) If the owner or operator requests an extension for emptying a wastewater tank in accordance with § 63.133(e)(2) of this subpart, the request shall include the information specified in § 63.133(e)(2).

(Approved by the Office of Management and Budget under Control Number 2060–________.)

§ 63.147 Process wastewater provisions—recordkeeping.

(a) The owner or operator of a SOCMI process unit shall keep a record of all reports submitted in accordance with § 63.146 of this subpart, including the Implementation Plan, Notification of Compliance Status, and Periodic Reports.

(b) The owner or operator transferring a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream in accordance with § 63.132(i) of this subpart shall keep a record of the notice sent to the treatment operator stating that the wastewater stream or residual contains organic HAP's which are required to be managed and treated in accordance with the provisions of this subpart.

(c) The owner or operator shall keep in a readily accessible location the records specified in paragraphs (c)(1) through (c)(6) of this section.

(1) A record that each waste management unit inspection required by §§ 63.133 through 63.137 was performed.

(2) A record that each inspection for closed vent systems and control devices required by § 63.139 was performed.

(3) A record of the results of each seal gap measurement required by §§ 63.133(d) and 63.137(c). The records shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 63.120(b)(2), (3), and (4) of this subpart.

(4) Except as provided in paragraph (g) of this section, a record of the concentration values and applicable calculations for each measurement specified in Items 1 through 6 in Table 11 of this subpart.

(5) Except as provided in paragraph (g) of this section, continuous records of the monitored parameters specified in Item 9 of Table 11, in Table 12, and in § 63.143(e)(2) of this subpart.

(6) For Item 7 and Item 8 of Table 11 of this subpart, the owner or operator shall keep the records approved by the Administrator.

(d) For each closed vent system and control device used to comply with §§ 63.133 through 63.139 of this subpart, the owner or operator shall keep a record of the information specified in paragraphs (d)(1) through (d)(3) of this section.

(1) Identification of all parts of the closed vent system and control device that are designated as unsafe to inspect, an explanation stating why the equipment is unsafe to inspect, and the plan for inspecting the equipment.

(2) Identification of all parts of the closed vent system and control device that are designated as difficult to inspect, an explanation stating why the equipment is difficult to inspect, and the plan for inspecting the equipment.

(3) For boilers or process heaters, records of any changes in the location at which the vent stream is introduced into the flame zone as required in § 63.139(b)(1).

(e) For each closed vent system that contains bypass lines that could divert a vent stream away from a control device used to comply with §§ 63.133 through 63.139 of this subpart and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (e)(1) or (e)(2) of this section.

(1) Continuous records of whether or not there is vent stream flow as specified in § 63.138(h)(1) of this subpart and records of the duration of all periods when the vent stream is diverted from the control device; or

(2) Records that monthly visual inspection of the seals or closure mechanisms has been done; records of the duration of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out; and records of any car seal that has broken.

(f) The owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day, except as provided in paragraphs (f)(3) and (f)(4) of this section.

(1) The daily average shall be calculated as the average of all values for a monitored parameter recorded during the operating day. The average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per day if operation is not continuous.

(2) The operating day shall be the period defined in the operating permit or the Notification of Compliance Status. It may be from midnight to midnight or another daily period.

(3) If all recorded values for a monitored parameter during an operating day are within the range established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were within the range rather than calculating and recording a daily average for that day.

(4) For flares, records of the duration of all periods during which the pilot flame is absent shall be kept rather than daily averages.

(5) For carbon adsorbers, the owner or operator shall keep the records specified in paragraphs (f)(5)(i) and (f)(5)(ii) instead of daily averages.

(i) Records of the total regeneration stream mass flow for each carbon bed regeneration cycle.

(ii) Records of the temperature of the carbon bed after each regeneration cycle.

(g) Where the owner or operator obtains approval to use a control device other than one for which monitoring requirements are specified in § 63.143 of this subpart, or to monitor parameters other than those specified in Table 11 or Table 12 of this subpart, the Administrator will specify appropriate recordkeeping requirements.

(Approved by the Office of Management and Budget under Control Number 2060–______)

§ 63.148 [Reserved]

§ 63.149 [Reserved]

§ 63.150 Emissions averaging provisions.

(a) This section applies to owners or operators who seek to comply with emission limits by using emissions averaging according to § 62.112(c)(2) of this subpart rather than following the provisions of §§ 63.113 through 63.149 of this subpart for all emission points.

(b) Unless an operating permit application has been submitted, the owner or operator shall develop, and submit for approval, an Implementation Plan containing all of the information required in § 63.151(d) of this subpart for all points to be included in an emission average. The Implementation Plan or operating permit application shall identify all emission points to be included in the emissions averaging. This must include any Group 1 emission points to which the reference control technology (defined in § 63.111 of this subpart) is not applied and all other emission points being controlled as part of the average.

(c) The following emission points can be credited in an emissions average to offset use of controls less stringent than the reference technology on Group 1 emission points, if sufficient information is available to determine the appropriate value of credits for the point:

(1) A Group 2 emission point to which a new control has been applied after November 15, 1990.

(2) A Group 1 emission point that is controlled by a technology that the Director of the EPA Office of Air Quality Planning and Standards or the operating permit authority agrees has a higher nominal control efficiency than the reference technology if the emission point was not controlled to this level on or before November 15, 1990. Information on the nominal control efficiencies for such technologies must be submitted and approved as provided in paragraph (h) of this section.

(3) Emission points from which emissions are reduced by pollution prevention projects initiated after 1987. For Group 1 emission points, in order to be credited, the pollution prevention projects must result in emission levels lower than what would have occurred if the reference technology had been applied to the emission points at their emission levels prior to pollution prevention. Pollution prevention is defined in paragraph (i) of this section.

(4) Any Group 2 emission point to which controls were applied as part of the early reduction program established by the EPA under section 112(i)(5) of the Clean Air Act as amended in 1990 (56 FR 27338).

(5) A Group 1 emission point controlled by a technology EPA agrees has a higher nominal control efficiency than the reference technology if this control was applied as part of the early reduction program established by the EPA under section 112(i)(5) of the Clean Air Act as amended in 1990 (56 FR 27338).

(6) Any Group 2 emissions point to which controls were applied as part of a commitment under the Agency's 33/50 program described in EPA Publication Number EPA–741–K–92–001.

(7) Any Group 1 emissions point controlled by a technology EPA agrees has a higher nominal control efficiency than the reference control technology if the control was applied as part of a commitment under the Agency's 33/50 program described in EPA Publication Number EPA–741–K–92–001.

(d) The following emission points cannot be used to generate credits in emission averaging:

(1) Emission points already controlled on or before November 15, 1990, except those that were controlled as part of the Section 112(i)(5) early reduction program, the 33/50 program, or a pollution prevention program as described in paragraph (c) of this section.

(2) Emission points achieving control levels higher than the nominal efficiency of a reference technology when using a reference control technology, unless the requirements of § 63.150(h)(6) of this subpart have been satisfied for process vents, or the requirements in § 63.150(g)(3)(ii)(C) or (g)(3)(iii)(D) have been satisfied for storage vessels. For example, it is not allowable to claim that an internal floating roof meeting the specifications of § 63.119(b) of this Subpart applied to a storage vessel is achieving greater than 95 percent control.

(3) Production cutbacks and shutdowns. The emission credits are calculated at the actual monthly production level and do not include any process units that are shut down.

(e) For all points included in an emission average, the owner or operator shall:

(1) Calculate and record monthly debits for all Group 1 emission points that are controlled to a level less stringent than the reference technology level for those emission points. Equations in paragraph (f) of this section shall be used to calculate debits.

(2) Calculate and record monthly credits for all Group 1 or Group 2 emission points that are overcontrolled to compensate for the debits using equations in paragraph (g) of this section. Emission points that meet the criteria of paragraph (c) of this section may be included in the credit calculation, whereas those described in paragraph (d) of this section shall not be included.

(3) Demonstrate that annual credits calculated according to paragraph (g) of this section are greater than or equal to debits calculated for the same annual compliance period according to paragraph (f) of this section. If the credits are not greater than or equal to the debits for the same annual compliance period, and the owner or operator has met the requirements in paragraphs (e)(3)(i) through (e)(3)(iv) of this section, the owner or operator may use banked credits and credits from the relevant compliance period to offset the debits. If banked credits are available and necessary, compliance shall be judged based on the sum of banked credits and credits from the relevant compliance period, averaged with debits from the relevant compliance period.

(i) If the credits calculated according to paragraph (g) of this section are greater than the debits calculated for the same annual compliance period according to paragraph (f) of this section, the owner or operator may bank the extra credits for use in future compliance periods.

(A) In order to bank credits for use in future compliance periods, the owner or operator must report the data used to calculate that the extra credits were generated and certify the accuracy of that data in the Periodic Reports as specified in § 63.152(c) of this Subpart. These records must be readily accessible for 5 years after the period in which the credit is available for use as specified in paragraph (e)(3)(iv) of this section.

(B) The owner or operator may choose to include more than the required number of credit generating emission points in an average in order to increase the likelihood of creating bankable credits. However, these additional points are not required to create bankable credits.

(ii) Banked credits can only be used to comply with the annual requirement specified in paragraph (e)(3) of this section. Banked credits cannot be used for the quarterly requirement specified in paragraph (e)(4) of this section.

(iii) In the Implementation Plan for emissions averaging as specified in § 63.151(c) and (d) of this subpart or the operating permit application as specified in § 63.152(e) of this subpart, the credit generating emission points must be capable of generating sufficient credits to offset the debits from the debit generating emission points under representative operating conditions. The owner or operator shall not develop an Implementation Plan or operating permit application for emissions averaging that relies on banked credits to ensure that credits will exceed debits. If such an averaging plan is submitted, it will not be approved.

(iv) The length of time that banked credits shall be available for use after the year in which the extra credit was generated is (a range of 2 to 5 years is being proposed; a single number will be selected at promulgation). If a banked credit is not used within (2 to 5) years of the year in which it was generated, it is no longer available for use.

(4) Demonstrate that debits calculated for a quarterly (3-month) period according to paragraph (f) of this section are not more than (a range of 1.25 to 1.35 is being proposed; a single number will be selected at promulgation) times the credits for the same period calculated according to paragraph (g) of this section. Compliance for the quarter shall be determined based on the ratio of credits and debits from that quarter,

with (25 to 35) percent more debits than credits allowed on a quarterly basis.

(5) Calculation of monthly credits and debits shall not include periods of startup, shutdown, and malfunction as described in the source's startup, shutdown, and malfunction plan required by § 63.6(e)(3) of subpart A of this part.[16]

(6) The quarterly and annual credits and debits shall be recorded and reported in the Periodic Reports as specified in § 63.152(c) of this subpart. The Periodic Reports shall include a certification of compliance with the emissions averaging provisions.

(f) Debits shall be calculated as follows:

(1) The overall equation for calculating source-wide debits is:

$$\text{Debits} = \sum_{i=1}^{n} (\text{EPV}_{i\text{ACTUAL}} - (0.02)\,\text{EPV}_{iu}) + \sum_{i=1}^{n} (\text{ES}_{i\text{ACTUAL}} - (0.05)\,\text{ES}_{iu}) + \sum_{i=1}^{n} (\text{ETR}_{i\text{ACTUAL}} - (0.02)\,\text{ETR}_{iu}) + \sum_{i=1}^{n} (\text{EWW}_{i\text{ACTUAL}} - \text{EWW}_{ic})$$

where:

Debits and all terms of the equation are in units of megagrams per month, and

EPV$_{iACTUAL}$=Emissions from each Group 1 process vent (i) that is not controlled to the level of the reference technology. This is calculated according to paragraph (f)(2) of this section.

(0.02) EPV$_{iu}$=Emissions from each Group 1 vent (i) if the reference control technology had been applied to the uncontrolled emissions, calculated according to paragraph (f)(2) of this section.

ES$_{iACTUAL}$=Emissions from each Group 1 storage vessel (i) that is not controlled to the level of the reference technology. This is calculated according to paragraph (f)(3) of this section.

(0.05) ES$_{iu}$=Emissions from each Group 1 storage vessel (i) if the reference control technology had been applied to the uncontrolled emissions, calculated according to paragraph (f)(3) of this section.

ETR$_{iACTUAL}$=Emissions from each Group 1 transfer rack (i) that is not controlled to the level of the reference technology. This is calculated according to paragraph (f)(4) of this section.

(0.02) ETR$_{iu}$=Emissions from each Group 1 transfer rack (i) if the reference control technology had been applied to the uncontrolled emissions, calculated according to paragraph (f)(4) of this section.

EWW$_{iACTUAL}$=Emissions from each Group 1 wastewater stream (i) that is not controlled to the level of the reference technology. This is calculated according to paragraph (f)(5) of this section.

EWW$_{ic}$=Emissions from each Group 1 wastewater stream (i) if the reference control technology had been applied to the uncontrolled emissions. This is calculated according to paragraph (f)(5) of this section.

n=The number of emission points being included in the emissions average. The value of n is not necessarily the same for process vents, storage vessels, transfer racks, and wastewater.

(2) Emissions from process vents shall be calculated as follows:

(i) For purposes of determining process vent stream flow rate, organic HAP concentrations, and temperature, the sampling site shall be after the final product recovery device, if any recovery devices are present, before any combustion device, and before discharge to the atmosphere. Method 1 or 1A shall be used for selection of the sampling site.

(ii) The following equation shall be used for each process vent (i) to calculate EPV$_{iu}$:

$$\text{EPV}_{iu} = \frac{(7.31 \times 10^{-7})\, Qh \left(\sum_{j=1}^{n} C_j M_j \right)}{T + 273}$$

where:

EPV$_{iu}$=Uncontrolled process vent emission rate from process vent (i) in megagrams per month.

Q=Vent stream flow rate (dry standard cubic meters per minute) measured using Method 2, 2A, 2C, or 2D of part 60, appendix A, as appropriate.

h=Monthly hours of operation during which positive flow is present in the vent.

C_j=Concentration (parts per million by volume, dry basis) of organic HAP compound j as measured by Method 18.

M_j=Molecular weight of organic HAP compound j (gram/gram-mole).

T=Vent stream discharge temperature, in °C.

n=Number of organic HAP compounds.

(A) The values of Q, C_j, M_j, and T shall be determined during an initial performance test conducted under representative operating conditions. Monthly testing is not required.

(B) If there is a change in capacity utilization other than a change in monthly operating hours, or if any other change is made to the process or product recovery equipment or operation such that the previously measured values of Q, C_j, M_j, or T are no longer representative, a new performance test shall be conducted.

(iii) The following procedures and equations shall be used to calculate EPV$_{iACTUAL}$:

(A) If the vent is not controlled by a control device or pollution prevention measure EPV$_{iACTUAL}$=EPV$_{iu}$, where EPV$_{iu}$ is calculated according to the procedures in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.

(B) If the vent is controlled using a control device or a pollution prevention measure achieving less than the 98-percent reduction level associated with the reference control technology,

$$\text{EPV}_{i\text{ACTUAL}} = \text{EPV}_{iu} \times \left(1 - \frac{\text{Percent reduction}}{100\%} \right)$$

(*1*) Percent reduction shall be initially measured according to the procedures in § 63.116 of this subpart if a combustion device is used. If a non-combustion control device is used, percent reduction shall be demonstrated by an initial performance test at the inlet and outlet of the control device or, if testing is not feasible, by a control design evaluation and documented engineering calculations.

(*2*) For process vents, product recovery devices shall not be considered control devices and cannot be assigned a percent reduction in calculating EPV$_{iACTUAL}$. The sampling site for measurement of uncontrolled emissions is after the final product recovery device. However, as provided in § 63.113(a)(3) of this subpart, a Group 1 process vent may add sufficient product recovery to raise the TRE index value above 1.0, thereby becoming a Group 2 process vent.

(*3*) Procedures for calculating the percent reduction of pollution prevention measures are specified in paragraph (i) of this section.

(3) Emissions from storage vessels shall be calculated as follows:

(i) The following equation shall be used for each storage vessel (i) to calculate ES$_{iu}$:

$$\text{ES}_{iu} = \frac{L_B + L_W}{12}$$

where:

ES$_{iu}$=Uncontrolled emissions from a fixed roof vessel having identical dimensions and vessel color as vessel i, in megagrams per month.

L_B=Breathing loss emissions in megagrams per year calculated according to paragraph (f)(3)(i)(A) of this section.

L_W=Working loss emissions in megagrams per year calculated according to paragraph (f)(3)(i)(B) of this section.

(A) Breathing loss emissions shall be calculated using the following equation:

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[16] The EPA will propose subpart A in the future.

$$L_B = 1.02 \times 10^{-5} M_v \left(\frac{P}{P_A - P}\right)^{0.68} D^{1.73} H^{0.51} \Delta T^{0.50} F_P C K_C$$

where:

L_B=Breathing loss emissions (megagrams per year).

M_v=Molecular weight of vapor in storage vessel (pound/pound mole).

P_A=Average atmospheric pressure (pounds per square inch absolute).

P=True vapor pressure of the HAP at liquid storage temperature (pounds per square inch absolute). See Table 20 of this subpart.

D=Tank diameter (feet).

H=Average vapor space height (feet). Use vessel-specific values or an assumed value of one-half the height.

ΔT=Average ambient diurnal temperature change (°F). A typical value of 20 °F may be used.

F_P=Paint factor (dimensionless) from Table 21.

C=Adjustment factor for small diameter tanks (dimensionless); use C=1 for diameter ≥30 feet; use $C=0.0771D-0.0013D^2-0.1334$ for diameter <30 feet.

K_C=Product factor (dimensionless). Use 1.0 for volatile organic HAP's.

(B) Working losses shall be calculated using the following equation:

$$L_W = 1.089 \times 10^{-8} M_v (P) (V) (N) (K_N) (K_C)$$

where:

V=Tank capacity (gallon).

N=Number of turnovers per year.

K_N=Turnover factor (dimensionless).

$$K_N = \frac{180+N}{6N} \quad \text{for turnovers} > 36$$

K_N=1 for turnovers ≤36.

M_v, P, and K_C as defined in paragraph (A) above.

(ii) The following equations shall be used for each fixed roof storage vessel (i) to calculate in $ES_{iACTUAL}$, in megagrams per month:

(A) If the vessel is not controlled with an internal floating roof, an external floating roof, a closed vent system and control device, or another control technique, $ES_{iACTUAL}=ES_{iu}$, where ES_{iu} is calculated according to the procedures in paragraph (f)(3)(i) of this section.

(B) If the vessel is controlled using a control device or pollution prevention measure achieving less than the 95 percent reduction level associated with the reference control technology,

$$ES_{iACTUAL} = ES_{iu} \cdot \left(\frac{1-\text{Percent reduction}}{100}\right)$$

(C) If the vessel is controlled with an internal or external floating roof that does not meet the specifications of § 63.119 (b), (c), or (d) of this subpart, $ES_{iACTUAL}$ shall be calculated as specified in paragraph (f)(3)(iii) or (f)(3)(iv) of this section.

(iii) The following equation shall be used for each internal floating roof vessel (i) that does not meet the specifications of § 63.119(b) or (d) of this Subpart to calculate $ES_{iACTUAL}$ in megagrams per month:

$$ES_{iACTUAL} = \frac{L_W+L_R+L_F+L_D}{12}$$

where:

L_W=Withdrawal loss emissions in megagrams per year calculated according to paragraph (f)(3)(iii)(A) of this section.

L_R=Rim seal loss emissions in megagrams per year calculated according to paragraph (f)(3)(iii)(B) of this section.

L_F=Fitting loss emissions in megagrams per year calculated according to paragraph (f)(3)(iii)(C) of this section.

L_D=Deck seam loss emissions in megagrams per year calculated according to paragraph (f)(3)(iii)(D) of this section.

(A) Withdrawal loss emissions shall be calculated using the following equation:

$$L_W = \frac{1.018 \times 10^{-5} QCW_L}{D} \left[1 + \left(\frac{N_C F_C}{D}\right)\right]$$

where:

Q=Throughput (gallon per year); (gallon/turnover) * (turnovers per year).

C=Shell clingage factor (barrel/1,000 feet^2), see Table 22 of this Subpart.

W_L=Average liquid density (pound/gallon).

D=Tank diameter (feet).

N_c=Number of columns (dimensionless), see Table 23 of this subpart.

F_c=Effective column diameter (feet) [column perimeter (feet) 3.1416], see Table 24 of this subpart.

(B) Rim seal loss emissions shall be calculated using the following equation:

$$L_R = \frac{K_s V^n P^* D M_v K_c}{2204.6}$$

where:

M_v=Molecular weight of vapor in storage vessel (pound/pound mole).

P_A=Average atmospheric pressure (pounds per square inch absolute).

P=True vapor pressure at liquid storage temperature (pounds per square inch absolute).

D=Tank diameter (feet).

K_c=Product factor (dimensionless); use 1.0 for organic HAP's.

K_s=Seal factor [pound-mole/(feet (miles per hour)^n year)], see Table 25 of this subpart.

V=Average wind speed at the source (miles per hour). A value of 10 miles per hour may be assumed if source-specific data are not available.

n=Seal related wind speed exponent (dimensionless), see Table 25 of this subpart.

P^*=Vapor pressure function (dimensionless),

$$P^* = \frac{\frac{P}{P_A}}{\left[1 + \left(1 - \frac{P}{P_a}\right)^{0.5}\right]^2}$$

(C) Fitting loss emissions shall be calculated using the following equation:

$$\text{Fitting Loss (Mg/yr)} = \frac{F_f P^* M_v K_c}{2205}$$

where:

F_f=The total deck fitting loss factor (pound mole per year), and

$$F_f = \sum_{i=1}^{n} (N_{F_i} K_{F_i}) = [(N_{F_1} K_{F_1}) + (N_{F_2} K_{F_2}) + \ldots + (N_{F_n} K_{F_n})]$$

where:

N_{F_i}=Number of fittings of a particular type (dimensionless). N_{F_i} is determined for the specific tank or estimated from Tables 23 and 26 of this subpart.

K_{F_i}=Deck fitting loss factor for a particular type fitting (pound mole per year). K_{F_i} is determined for each fitting type from Table 26 of this subpart.

n=Number of different types of fittings (dimensionless).

2205=Constant (pound/megagram).

P^*, M_v, K_c=as defined above.

(D) Deck seam loss emissions shall be calculated using the following equation:

$$\text{Deck Seam Loss (Mg/yr)} = \frac{K_D S_D D^2 P^* M_v K_c}{2204.6}$$

where:

K_D=Deck seam loss factor (pound-mole/feet year).

=0.34 for non-welded decks.

=0 for welded decks.

S_D=Deck seam length factor (feet/feet^2), see Table 27 of this subpart.

D, P^*, M_v, K_c=as defined above.

(iv) The following equation shall be used for each external floating roof vessel (i) does not meet the specifications of § 63.119(c) of this Subpart to calculate $ES_{iACTUAL}$ in megagrams per month:

$$ES_{iACTUAL} = \frac{L_W + L_R + L_F}{12}$$

where:

L_W=Withdrawal loss emissions in megagrams per year calculated according to paragraph (f)(3)(iv)(A) of this section.

L_R=Rim seal loss emissions in megagrams per year calculated according to paragraph (f)(3)(iv)(B) of this section.

L_F=Fitting loss emissions in megagrams per year calculated according to paragraph (f)(3)(iv)(C) of this section.

(A) Withdrawal loss emissions shall be calculated using the following equation:

$$L_W = 4.28 * 10^{-4}\, QCW_L/D$$

where:

Q=Throughput (gallons per year).

C=Shell clingage factor (barrel per 1,000 feet^2), see Table 22 of this subpart.

W_L=Average liquid density (pound/gallon).

D=Vessel diameter (feet).

(B) Seal loss emissions shall be calculated using the following equation:

$$L_{SF} = K_s V^N P^* D M_v K_c / 2205$$

where:

K_s=Seal factor, see Table 28 of this subpart.

V=Average wind speed (miles per hour) at the source. A value of 10 miles per hour may be assumed if source-specific data are not available.

N=Seal wind speed exponent, see Table 28 of this subpart.

P^*=Dimensionless vapor pressure function as defined in paragraph (f)(3)(iii)(B) of this section.

D=Vessel diameter in feet.

M_V=Molecular weight of the HAP in pound/pound-mole.

K_c=Dimensionless product factor (use 1.0 for volatile organic HAP's).

2205=Constant (pound/megagram).

(C) Fitting loss emissions shall be calculated using the following equation:

$$L_{RF} = F_F P^* M_v K_c / 2205$$

where:

F_F=The total deck fitting loss factor (pound mole per year).

$$= \sum_{i=1}^{n} (N_{F_i} K_{F_i}) = (N_{F_1} K_{F_1}) + (N_{F_2} K_{F_2}) + \cdots + (N_{F_n} K_{F_n})$$

where:

N_{F_i}=Number of fittings of a particular type (dimensionless). N_{F_i} is determined for the specific tank or estimated from Tables 29 through 31 of this subpart.

K_{F_i} = Deck fitting loss factor for a particular type fitting (pound mole per year).

= $K_{Fa_i} + K_{Fb_i} V^{m_i}$, see Table 29 of this subpart for the appropriate values of K_{Fa}, K_{Fb}, and m for each fitting type.

P^*, M_v, K_c = as defined above.

(4) Emissions from transfer racks shall be calculated as follows:

(i) The following equation shall be used for each transfer rack (i) to calculate ETR_{iu}:

$$ETR_{iu} = (1.20 \times 10^{-7})\ \frac{SPMG}{T}$$

where:

ETR_{iu} = Uncontrolled transfer emission rate, megagrams per month.

S = Saturation factor (see Table 32 of this subpart).

P = Weighted average rack vapor pressure of organic HAP's transferred at the rack during the month, kilopascals.

M = Weighted average molecular weight of organic HAP's transferred at the rack during the month, gram/gram-mole.

G = Monthly volume of organic HAP transferred, liters per month.

T = Temperature of bulk liquid loaded, °Kelvin (°C+273).

(ii) The following equation shall be used for each transfer rack (i) to calculate the weighted average rack vapor pressure (P):

$$P = \frac{\sum_{1}^{j=n} (P_j)(G_j)}{G}$$

where:

P = Weighted average rack vapor pressure of organic HAP's transferred at the rack during the month, kilopascals.

P_j = Vapor pressure of individual organic HAP transferred at the rack, kilopascals.

G = Monthly volume of organic HAP transferred, liters per month.

G_j = Monthly volume of individual organic HAP transferred at the rack, liters.

n = Number of organic HAP's transferred at the rack.

(iii) The following equation shall be used for each transfer rack (i) to calculate the weighted average rack molecular weight (M):

$$M = \frac{\sum_{1}^{j=n} M_j G_j}{G}$$

where:

M=Weighted average molecular weight of organic HAP transferred at the rack during a month, gram/gram-mole.

M_j=Molecular weight of individual organic HAP transferred at the rack, gram/gram-mole.

G_j=Monthly volume of individual organic HAP transferred at the rack, liters per month.

n=Number of organic HAP's transferred at the rack.

(iv) The following procedures and equations shall be used to calculate $ETR_{iACTUAL}$:

(A) If the transfer rack is not controlled, $ETR_{iACTUAL}=ETR_{iu}$, where ETR_{iu} is calculated using the equations under paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section.

(B) If the transfer rack is controlled using a control device or a pollution prevention measure achieving less than 98 percent reduction level associated with the reference control technology level,

$$ETR_{iACTUAL} = ETR_{iu}\left(\frac{1 - \text{Percent reduction}}{100\%}\right)$$

(*1*) The percent reduction for a combustion or recovery device shall be initially measured according to the equations and methods specified in § 63.128(a) of this Subpart. As other control techniques are used, percent reduction shall be demonstrated by an initial performance test or by a control design analysis and documented engineering calculations.

(*2*) Procedures for calculating the percent reduction for pollution prevention measures are specified in paragraph (i) of this section.

(5) Emissions from wastewater shall be calculated as follows: In paragraph (f)(5) of this section, the terms wastewater and wastewater stream are used to mean wastewater.

(i) The following equation shall be used for each wastewater stream (i) to calculate EWW_{ic}:

$$EWW_{ic} = (6.0 \times 10^{-8})\ Q_i\ H_i \sum_{m=1}^{s} (1 - Fr_m)\ Fe_m\ HAP_{im} + (0.05)\ (6.0 \times 10^{-8})\ Q_i\ H_i \sum_{m=1}^{s} (Fr_m\ HAP_{im})$$

where:

EWW_{ic}=Monthly wastewater stream emission rate if wastewater stream (i) is controlled by the reference control technology, in megagrams per month.

Q_i=Average flow rate for wastewater stream (i), as determined by the procedure in § 63.144(e)(3) of this subpart, in liters per minute.

H_i=Number of hours during the month that wastewater stream (i) was discharged, in hours per month.

Fr_m=Strippability factor of HAP compound (m) in wastewater, from Table 33 of this subpart, dimensionless.

Fe_m=Fraction emitted of HAP compound (m) in wastewater from Table 33 of this subpart, dimensionless.

s=Total number of organic HAP compounds in wastewater stream (i).

HAP_{im}=Average organic HAP concentration of compound (m) in wastewater stream (i), in parts per million by weight, as determined for the point of generation using the sampling procedure in § 63.144(b)(3)(i) and (b)(3)(ii) of this subpart. To analyze the samples collected, (1) a test method or results from a test method that measures organic HAP concentrations in the wastewater, and that has been validated pursuant to section 5.1 or 5.3 of Method 301 of appendix A of this Part may be used; or (2) the procedures in § 63.144(b)(3)(iii)(A) of this Subpart may be used to determine the term C_{im} described below, and then HAP_{im} may be calculated from it using the following equations

$HAP_{im}=C_{im}/Fm_m$, where Fm_m for compound m is obtained from Table 13 of this Subpart.

C_{im}=Average VOHAP concentration of HAP compound (m) in wastewater stream (i), as determined for the point of generation according to the procedures in § 63.144(b)(3) of this Subpart, in parts per million by weight.

(A) Values for Q_i, C_{im}, and HAP_{im} may be determined during an initial performance test conducted under representative conditions. The average value obtained from three test runs shall be used. Monthly testing is not required.

(B) If there is a change to the process or operation such that the previously measured values of Q_i, C_{im}, and HAP_{im} are no longer representative, a new performance test shall be conducted.

(C) As an alternative to the performance testing specified in paragraphs (f)(5)(i) (A) and (B) of this section, Q_i may be determined from records or process knowledge as specified in § 63.144(a), and C_{im} and HAP_{im} may be determined through process knowledge as specified in § 63.144(b) of this Subpart.

(ii) The following equation shall be used to calculate $EWW_{iACTUAL}$ for each wastewater stream (i) which is managed in any wastewater tank, surface impoundment, container, individual drain system, or oil-water separator not meeting the requirements of §§ 63.133 through 63.137 of this Subpart, respectively, or any other waste management unit or treatment process not meeting the requirements of § 63.138(h) of this subpart:

$$EWW_{iACTUAL} = (6.0 \times 10^{-8})\ Q_i\ H_i \sum_{m=1}^{s} Fe_m\ HAP_{im}$$

where:

$\Sigma EWW_{iACTUAL}$=Monthly wastewater stream emission rate if wastewater stream (i) is not controlled to the level of the reference control technology, in megagrams per month.

Q_i, H_i, s, F_{em}, and HAP_{im} are as defined and determined according to paragraph (f)(5)(i) of this section.

(iii) The following equation shall be used to calculate $EWW_{iACTUAL}$ for each wastewater stream (i) for which all wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators used to manage the wastewater stream meet the requirements of §§ 63.133 through 63.137 of this subpart and any other waste management unit or treatment process meets the requirements of § 63.138(h) of this subpart, and wastewater stream (i) is not controlled to the level of the reference control technology:

$$EWW_{iACTUAL} = (6.0 \times 10^{-8})\ Q_i\ H_i \sum_{m=1}^{s} (Fe_m\ HAP_{im}\ (1 - PR_{im})) + \left(1 - \frac{R_i}{100\%}\right) (6.0 \times 10^{-8})\ Q_i\ H_i \sum_{m=1}^{s} (HAP_{im}\ PR_{im})$$

where:

$EWW_{iACTUAL}$=Monthly wastewater stream emission rate if wastewater stream (i) is not controlled to the level of the reference control technology, in megagrams per month.

PR_{im}=The efficiency of the treatment process, or series of treatment processes, which treat wastewater stream (i), in reducing the emission potential of organic HAP compound (m) in wastewater, dimensionless, as calculated by:

$$PR_{im} = \frac{HAP_{im\text{-}in} - HAP_{im\text{-}out}}{HAP_{im\text{-}in}}$$

where:

$HAP_{im\text{-}in}$=Average concentration of HAP compound (m), defined and determined according to paragraph (f)(5)(i) of this section, in the wastewater entering the first treatment process in the series.

$HAP_{im\text{-}out}$=Average concentration of HAP compound (m), defined and determined according to paragraph (f)(5)(i) of this section, in the wastewater exiting the last treatment process in the series.

R_i=Organic reduction efficiency of the device used to control any vapor streams emitted and collected from wastewater stream (i) during treatment, as determined according to the procedures in § 63.145(f) of this subpart.

Q_i, H_i, s, F_{em}, and HAP_{im} are as defined and determined according to paragraph (f)(5)(i) of this section. Values of $C_{m\text{-}in}$, $C_{m\text{-}out}$, C_{im}, and HAP_{im} may be measured during an initial test or determined based on knowledge as provided in paragraph (f)(5)(i)(A), (B), and (C) of this section.

(g) Credits shall be calculated as follows:

(1) The overall equation for calculating source-wide credits is:

$$\text{Credits} = D\sum_{i=1}^{n}((0.02)\,EPV1_{iu} - EPV1_{iACTUAL}) + D\sum_{i=1}^{m}(EPV2_{iBASE}\quad EPV2_{iACTUAL}) + D\sum_{i=1}^{n}((0.05)\,ES1_{i}\ ES1_{iACTUAL}) + D\sum_{i=1}^{m}(ES2_{iBASE} - ES2_{iACTUAL}) + D\sum_{i=1}^{n}((0.02)\,ETR1_{iu} - ETR1_{iACTUAL}) + D\sum_{i=1}^{m}(ETR2_{iBASE} - ETR2_{iACTUAL}) + D\sum_{i=1}^{n}(EWW1_{ic} - EWW1_{iACTUAL}) + D\sum_{i=1}^{m}(EWW2_{iBASE} - EWW2_{iACTUAL})$$

where:

Credits and all terms of the equation are in units of megagrams per month, and the baseline date is November 15, 1990, except that for a pollution prevention measure initiated after 1987 or a control applied as part of the early reduction program or the 33/50 program, the baseline date is prior to initiation of the pollution prevention measure or the early reduction or 33/50 program control strategy, and

D=Discount factor=(A range of 0.8 to 1.0 is proposed. A single number will be selected at promulgation).

$EPV1_{iACTUAL}$=Emissions for each Group 1 process vent (i) that is controlled to a level more stringent than the reference control technology, calculated according to paragraph (g)(2) of this section.

(0.02) $EPV1_{iu}$=Emissions from each Group 1 process vent (i) if the reference control technology had been applied to the uncontrolled emissions. EPV1iu is calculated according to paragraph (g)(2) of this section.

$EPV2_{iACTUAL}$=Emissions from each Group 2 process vent (i) that is controlled, calculated according to paragraph (g)(2) of this section.

$EPV2_{iBASE}$=Emissions from each Group 2 process vent (i) at the baseline date, as calculated in paragraph (g)(2) of this section.

$ES1_{iACTUAL}$=Emissions from each Group 1 storage vessel (i) that is controlled to a level more stringent than the reference control technology, calculated according to paragraph (g)(3) of this section.

(0.05) $ES1_{iu}$=Emissions from each Group 1 storage vessel (i) if the reference control technology had been applied to the uncontrolled emissions. $ES1_{iu}$ is calculated according to paragraph (g)(3) of this section.

$ES2_{iACTUAL}$=Emissions from each Group 2 storage vessel (i) that is controlled, calculated according to paragraph (g)(3) of this section.

$ES2_{iBASE}$=Emissions from each Group 2 storage vessel (i) at the baseline date, as calculated in paragraph (g)(3) of this section.

$ETR1_{iACTUAL}$=Emissions from each Group 1 transfer rack (i) that is controlled to a level more stringent than the reference control technology, calculated according to paragraph (g)(4) of this section.

(0.02) $ETR1_{iu}$=Emissions from each Group 1 transfer rack (i) if the reference control technology had been applied to the uncontrolled emissions. $ETR1_{iu}$ is calculated according to paragraph (g)(4) of this section.

$ETR2_{iACTUAL}$=Emissions from each Group 2 transfer rack (i) that are controlled, calculated according to paragraph (g)(4) of this section.

$ETR2_{iBASE}$=Emissions from each Group 2 transfer rack (i) at the baseline date, as calculated in paragraph (g)(4) of this section.

$EWW1_{iACTUAL}$=Emissions from each Group 1 wastewater stream (i) that is controlled to a level more stringent than the reference control technology, calculated according to paragraph (g)(5) of this section.

$EWW1_{ic}$=Emissions from each Group 1 wastewater stream (i) if the reference control technology had been applied to the uncontrolled emissions, calculated according to paragraph (g)(5) of this section.

$EWW2_{iACTUAL}$=Emissions from each Group 2 wastewater stream (i) that is controlled, calculated according to paragraph (g)(5) of this section.

$EWW2_{iBASE}$=Emissions from each Group 2 wastewater stream (i) at the baseline date, calculated according to paragraph (g)(5) of this section.

n=Number of Group 1 emission points included in the emissions average. The value of n is not necessarily the same for process vents, storage vessels, transfer racks, and wastewater.

m=Number of Group 2 emission points included in the emissions average. The value of m is not necessarily the same for process vents, storage vessels, transfer racks, and wastewater.

(2) Emissions from process vents shall be determined as follows:

(i) Uncontrolled emissions from Group 1 process vents, $EPV1_{iu}$, shall be calculated according to the procedures and equations in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.

(ii) The following procedures and equations shall be used to calculate actual emissions from Group 1 process vents, $EPV1_{iACTUAL}$.

(A) If a Group 1 process vent is controlled using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent emission reduction,

$$EPV1_{iACTUAL} = EPV1_{iu}\left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right)$$

(B) The nominal efficiency shall be determined as described in paragraph (h) of this section for a control device and paragraph (i) of this section for a pollution prevention measure.

(C) Combustion devices shall not be attributed a nominal efficiency greater than 98 percent, unless they have been assigned a higher nominal efficiency according to the procedures in paragraph (h) of this section.

(iii) The following procedures shall be used to calculate actual emissions from Group 2 process vents, EPV2$_{iACTUAL}$:

(A) If a Group 2 process vent is controlled by a control device, a recovery device applied after 1987 as a pollution prevention project, or a pollution prevention measure achieving a percent reduction less than or equal to 98 percent reduction level associated with the reference control technology,

$$EPV2_{iACTUAL} = EPV2_{iu} \times \left(1 - \frac{\text{Percent reduction \%}}{100\%}\right)$$

(*1*) EPV2$_{iu}$ shall be calculated according to the equations and procedures in paragraph (f)(2)(i) and (f)(2)(ii) of this section, except as provided in paragraph (g)(2)(iii)(A)(*3*) below.

(*2*) The percent reduction shall be calculated according to the procedures in paragraph (f)(2)(iii)(B)(*1*), (*2*), and (*3*) of this section, except as provided in paragraph (g)(2)(iii)(A)(*4*) below.

(*3*) If a recovery device was added as part of a pollution prevention project initiated after 1987, EPV2$_{iu}$ shall be calculated prior to the recovery device. The equation in paragraph (f)(2)(ii) of this section shall be used to calculate EPV2$_{iu}$; however, the sampling site for measurement of vent stream flow rate, organic HAP concentration, and temperature shall be at the inlet of the recovery device.

(*4*) If a recovery device was added as part of a pollution prevention project initiated after 1987, the percent reduction shall be demonstrated by conducting a performance test at the inlet and outlet of the recovery device.

(B) If a Group 2 process vent is controlled using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent reduction,

$$EPV2_{iACTUAL} = EPV2_{iu} \left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right)$$

(*1*) The nominal efficiency shall be determined as described in paragraph (h) of this section for a control device or in paragraph (i) of this section for a pollution prevention measure.

(*2*) Combustion devices shall not be attributed a nominal efficiency greater than 98 percent, unless they have been assigned a higher nominal efficiency according to the procedures in paragraph (h) of this section.

(iv) Emissions from Group 2 process vents at baseline, EPV2i$_{iBASE}$, shall be calculated as follows:

(A) If the process vent was uncontrolled on November 15, 1990, EPV$_{2iBASE}$ = EPV2$_{iu}$ and shall be calculated according to the procedures and equations in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.

(B) If the process vent was controlled on November 15, 1990, and this control was not applied under either the 33/50 or the early reduction program and was not the result of a pollution prevention measure,

$$EPV2_{iBASE} = EPV2_{iu} \left(1 - \frac{\text{Percent reduction \%}}{100\%}\right)$$

Where EPV2$_{iu}$ is calculated according to the equations in paragraphs (f)(2)(i) and (f)(2)(ii) of this section. The percent reduction shall be calculated according to the procedures specified in paragraphs (f)(2)(iii)(B) (*1*), (*2*), and (*3*) of this section.

(C) If a recovery device was added to a process vent as part of a pollution prevention project initiated after 1987, EPV2$_{iBASE}$ = EPV2$_{iu}$, where EPV2$_{iu}$ is calculated according to paragraph (g)(2)(iii)(A)(*3*) of this section.

(3) Emissions from storage vessels shall be determined as follows:

(i) Uncontrolled emissions from Group 1 storage vessels, ES1$_{iu}$, shall be calculated according to the equation in paragraph (f)(3)(i) of this section.

(ii) The following procedures and equations shall be used to calculate actual emissions from Group 1 storage vessels, ES1$_{iACTUAL}$.

(A) If a Group 1 storage vessel is controlled using a technology with an approved nominal efficiency greater than 95 percent or a pollution prevention measure achieving greater than 95 percent emission reduction,

$$ES1_{iACTUAL} = ES1_{iu} \left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right)$$

(B) Except as provided in paragraph (g)(3)(ii)(c) of this section, the nominal efficiency shall be determined as described in paragraph (h) of this section for a control device and paragraph (i) of this section for a pollution prevention measure.

(C) If a Group 1 Storage Vessel is controlled using a closed vent system and control device that is demonstrated to achieve at least 98 percent emission reduction, then the 98 percent can be used as the nominal efficiency in the equation in paragraph (g)(3)(ii)(A) of this section, and the owner or operator is not required to apply for a nominal efficiency according to paragraph (h) of this section.

(*1*) To demonstrate that 98 percent emission reduction is achieved, the owner or operator shall conduct a performance test according to the procedures in § 63.116 of this Subpart or use a design analysis. If a performance test is used, sampling sites shall be located at the inlet and outlet of the control device.

(*2*) The owner or operator shall report the results of the performance test and establish the range for the monitored parameter(s) in the Notification of Compliance Status required by § 63.152(b) of this subpart.

(iii) The following procedures shall be used to calculate actual emissions from Group 2 storage vessels, ES2$_{iACTUAL}$:

(A) If a Group 2 storage vessel is controlled using a closed vent system and control device or a pollution prevention measure achieving a percent reduction less than or equal to the 95 percent reduction level associated with the reference control technology,

$$ES2_{iACTUAL} = ES2_{iu} \times \left(1 - \frac{\text{Percent reduction \%}}{100\%}\right)$$

where ES$_{iu}$ is calculated according to the equations and procedures in paragraph (f)(3)(i) of this section.

(B) If a Group 2 storage vessel is controlled with an internal or external floating roof, ES2$_{iACTUAL}$. shall be calculated as specified in paragraph (f)(3)(iii) or (f)(3)(iv) of this section.

(C) If a Group 2 storage vessel is controlled using a technology with an approved nominal efficiency greater than 95 percent or a pollution prevention measure achieving greater than 95 percent reduction,

$$ES2_{iACTUAL} = ES2_{iu} \left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right)$$

(*1*) The nominal efficiency for a control device shall be determined as described in paragraph (h) of this section, except as provided in paragraph (g)(3)(iii)(D) of this section.

(*2*) The nominal efficiency for a pollution prevention measure shall be determined as described in paragraph (i) of this section.

(D) If a Group 2 Storage Vessel is controlled using a closed vent system and control device that is demonstrated to achieve at least 98 percent emission reduction, then the 98 percent can be used as the nominal efficiency in the equation in paragraph (g)(3)(iii)(C) of this section, and the owner or operator is not required to apply for a nominal efficiency according to paragraph (h) of this section.

(*1*) To demonstrate that 98 percent emission reduction is achieved, the owner or operator shall conduct a performance test according to the procedures in § 63.116 of this Subpart or use a design analysis. If a performance test is used, sampling sites shall be located at the inlet and outlet of the control device.

(*2*) The owner or operator shall report the results of the performance test and establish the range for the monitored parameter(s) in the Notification of Compliance Status required by § 63.152(b) of this Subpart.

(iv) Emissions from Group 2 storage vessels at baseline, ES2$_{iBASE}$, shall be calculated as follows:

(A) If the vessel was not controlled with an internal floating roof, an external floating roof, a closed vent system and control device, or another control technique on November 15, 1990, $ES2_{iBASE} = ES2_{iu}$ and shall be calculated according to the procedures and equations in paragraph (f)(3)(i) of this section.

(B) If the storage vessel was controlled on November 15, 1990, and this control was not applied under either the 33/50 or the early reduction program and was not the result of a pollution prevention measure,

(*1*) The equations in paragraph (f)(3)(iii) of this section shall be used to calculate $ES2_{iBASE}$ for vessels controlled with an internal floating roof.

(*2*) The equations in paragraph (f)(3)(iv) of this section shall be used to calculate $ES2_{iBASE}$ for vessels controlled with an external floating roof.

(*3*) The following equations shall be used to calculate $ES2_{iBASE}$ for vessels controlled with a closed vent system and control device,

$$ES2_{iBASE} = ES2_{iu}\left(1 - \frac{\text{Percent reduction \%}}{100\%}\right)$$

where ES_{iu} is calculated according to the equations in paragraph (f)(3)(i) of this section.

(4) Emissions from transfer racks shall be determined as follows:

(i) Uncontrolled emissions from Group 1 transfer racks, $ETR1_{iu}$, shall be calculated as described in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section.

(ii) The following procedures and equations shall be used to calculate actual emissions from Group 1 transfer racks, $ETR1_{iACTUAL}$:

(A) If a Group 1 transfer rack is controlled using a technology, other than the reference control technology, with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent emission reduction,

$$ETR1_{iACTUAL} = ETR1_{iu}\left(1 - \frac{\text{Nominal efficiency}}{100\%}\right)$$

(B) The nominal efficiency shall be determined as described in paragraph (h) of this section for a control device other than the reference technology and paragraph (i) of this section for a pollution prevention measure.

(C) Combustion devices, carbon adsorbers, absorbers, and condensers shall not be attributed a nominal efficiency greater than 98 percent.

(iii) The following procedures shall be used to calculate actual emissions from Group 2 transfer racks, $ETR2_{iACTUAL}$:

(A) If a Group 2 transfer rack is controlled by a control device or a pollution prevention measure achieving a percent reduction less than or equal to the 98 percent level associated with the reference control technology,

$$ETR2_{iACTUAL} = ETR2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right)$$

(*1*) ETR_{iu} shall be calculated according to the equations and procedures in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section.

(*2*) The percent reduction shall be calculated according to the procedures in paragraph (f)(4)(iv)(B) (*1*) and (*2*) of this section.

(B) If a Group 2 transfer rack is controlled using a technology, other than the reference control technology, with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent reduction,

$$ETR2_{iACTUAL} = ETR2_{iu}\left(1 - \frac{\text{Nominal efficiency}}{100\%}\right)$$

(*1*) The nominal efficiency shall be determined as described in paragraph (h) of this section for a control device or in paragraph (i) of this section for a pollution prevention measure.

(*2*) Combustion devices, carbon adsorbers, absorbers, and condensers shall not be attributed a nominal efficiency greater than 98 percent.

(iv) Emissions from Group 2 transfer racks at baseline, $ETR2_{iBASE}$, shall be calculated as follows:

(A) If the transfer rack was uncontrolled on November 15, 1990, $ETR2_{iBASE} = ETR2_{iu}$ and shall be calculated according to the procedures and equations in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section.

(B) If the transfer rack was controlled on November 15, 1990, and this control was not applied under either the 33/50 or the early reduction program and was not the result of a pollution prevention measure,

$$ETR2_{iBASE} = ETR2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right)$$

where $ETR2_{iu}$ is calculated according to the equations in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section. Percent reduction shall be calculated according to the procedures in paragraphs (f)(4)(iv)(B)(*1*) and (*2*) of this section.

(5) Emissions from wastewater shall be determined as follows. In paragraph (g)(5) of this section, the terms wastewater and wastewater stream are used to mean process wastewater.

(i) $EWW1_{ic}$ shall be calculated according to the equation for EWW_{ic} in paragraph (f)(5)(i) of this section.

(ii) $EWW2_{iBASE}$ shall be calculated according to the equation for $EWW_{iACTUAL}$ in paragraph (f)(5)(ii) of this section for each wastewater stream (i), which, on the baseline date specified in paragraph (g)(1) of this section, was untreated, or which was managed either in a wastewater tank, surface impoundment, container, individual drain system or oil-water separator not meeting the requirements of § 63.133 through § 63.137 of this subpart, respectively, or in any other waste management unit or treatment process not meeting the requirements of § 63.138(h) of this subpart.

(iii) $EWW2_{iBASE}$ shall be calculated according to the equation for $EWW_{iACTUAL}$ in paragraph (f)(5)(iii) of this section for each wastewater stream (i), for which all tanks, surface impoundments, containers, individual drain systems and oil-water separators used to manage the wastewater stream met the requirements of § 63.133 through § 63.137 of this subpart, respectively, and for which all other waste management units or treatment processes used to manage the wastewater stream met the requirements of § 63.138(h) of this subpart on the baseline date specified in paragraph (g)(1) of this section.

(iv) $EWW2_{iACTUAL}$ shall be calculated as follows:

(A) $EWW2_{iACTUAL}$ shall be calculated according to the equation for $EWW_{iACTUAL}$ in paragraph (f)(5)(iii) of this section for each wastewater stream (i) which is controlled to a level less stringent than, or equivalent to, the reference control technology level. Group 2 streams are not considered to be controlled if they are not treated by a treatment process, or if they are managed in any wastewater tank, surface impoundment, container, individual drain system, or oil-water separator not meeting the requirements of § 63.133 through § 63.137 of this subpart, respectively, or in any other waste management unit or treatment process not meeting the requirements of § 63.138(h) of this subpart.

(B) If a Group 2 wastewater stream is controlled to a level more stringent than the level of the reference control technology, the procedures for calculating $EWW1_{iACTUAL}$ in paragraph (g)(5)(v) of this section shall be used to calculate $EWW2_{iACTUAL}$.

(v) The following equations for $EWW1_{iACTUAL}$ shall be used to calculate emissions from each Group 1 wastewater stream (i) that is controlled to a level more stringent than the reference control technology. Group 1 streams are not considered to be controlled to or above the level of the reference control technology if they are managed in any wastewater tank, surface impoundment, container, individual drain system, or oil-water separator not meeting the requirements of § 63.133 through § 63.137 of this subpart, respectively, or in any other waste management unit or treatment process not meeting the requirements of § 63.138(h) of this subpart.

(A) If the Group 1 wastewater stream (i) is controlled using a treatment process or series of treatment processes which achieve an approved nominal reduction efficiency in the total VOHAP concentration of stream (i) greater than that which would be achieved using the design steam stripper specified in § 63.138(f) of this Subpart, but the control device used to reduce HAP emissions from the vapor stream(s) vented from the treatment process(es) achieves an efficiency equal to the 95 percent of the reference control technology, the following formula shall be used:

$$EWW1_{iACTUAL} = (6.0 \times 10^{-8})\, Q_i\, H_i \sum_{m=1}^{s} [Fe_m\, HAP_{im}\, (1 - PR_{im})] - 0.05\, (6.0 \times 10^{-8})\, Q_i\, H_i \sum_{m=1}^{s} [HAP_{im}\, PR_{im}]$$

where all terms are as defined and determined in paragraph (f)(5) of this section.

(B) If the Group 1 wastewater stream (i) is not controlled using a treatment process or series of treatment processes which achieves a total VOHAP concentration reduction greater than that which would be achieved using the design steam stripper specified in § 63.138(f) of this Subpart, but the vapor stream(s) vented from the treatment process(es) are controlled using a device, other than the reference control technology, for which EPA has approved a nominal efficiency greater than 95 percent, the following formula shall be used:

$$EWW1_{iACTUAL} = (6.0 \times 10^{-8})\, Q_i\, H_i \sum_{m=1}^{s} [Fe_m\, HAP_{im}\, (1 - Fr_m)] - \left(1 - \frac{\text{Nominal efficiency \%}}{100}\right) (6.0 \times 10^{-8})\, Q_i\, H_i \sum_{m=1}^{s} [HAP_{im}\, Fr_m]$$

where all terms other than nominal efficiency are as defined and determined in paragraph (f)(5) of this section.

(C) If the Group 1 wastewater stream (i) is controlled using a treatment process or series of treatment processes which achieves a total VOHAP concentration reduction greater than that which would be achieved using the design steam stripper specified in § 63.138(f) of this Subpart, and the vapor stream(s) vented from the treatment process are controlled using a device, other than the reference control technology, with an approved nominal efficiency greater than 95 percent, the following formula shall be used:

$$EWW1_{iACTUAL} = (6.0 \times 10^{-8})\, Q_i\, H_i \sum_{m=1}^{s} [Fe_m\, HAP_{im}\, (1 - PR_m)] - \left(1 - \frac{\text{Nominal efficiency \%}}{100}\right) (6.0 \times 10^{-8})\, Q_i\, H_i \sum_{m=1}^{s} [HAP_{im}\, PR_m]$$

where all terms other than nominal efficiency are as defined and determined in paragraph (f)(5) of this section.

(D) The nominal efficiency for a treatment process or control device shall be determined as described in paragraph (h) of this section.

(h) The following procedures shall be followed to establish a nominal efficiency for any control technology achieving greater emission reduction than the percentage efficiency assigned to the reference control technology in § 63.111 of this subpart. The procedures in paragraphs (h)(1) through (h)(5) of this section shall be followed for control technologies that are different in use or design from the reference control technologies. The procedures in paragraph (h)(6) of this section shall be followed for process vents controlled by reference control technologies that can be demonstrated to consistently achieve a higher control efficiency than that which has been assigned by the proposed rule to that particular type of device.

(1) The owner or operator seeking permission to take credit for use of a technology that is different in use or design from the reference control technology shall submit the information specified in paragraphs (h)(1)(i) through (h)(1)(iv) of this section in writing to the Director of the EPA Office of Air Quality Planning and Standards:

(i) Emission stream characteristics of each emission point to which the control technology is or will be applied including the kind of emission points, flow, organic HAP concentration, and all other stream characteristics necessary to design the control technology or determine its performance,

(ii) Description of the control technology including design specifications,

(iii) Documentation demonstrating to the Director's satisfaction the control efficiency of the control technology. This may include performance test data collected using an appropriate EPA method or any other method validated according to Method 301 of appendix A of this part. If it is infeasible to obtain test data, documentation may include a design analysis and engineering calculations. The basis of the calculational procedures and all inputs and assumptions made in the calculations shall be documented.

(iv) A description of the parameter or parameters to be monitored to ensure that the control technology will be operated in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).

(2) The Director shall determine within 120 days whether an application presents sufficient information to determine nominal efficiency. The Director reserves the right to request specific data in addition to the items listed in paragraph (h)(1) of this section.

(3) The Director shall determine within 120 days of the submittal of sufficient data whether a device shall have a nominal control efficiency and the level of that nominal efficiency. If, in the Director's judgment, the control technology achieves a level of emission reduction greater than the reference control technology for a particular kind of emission point, the Director will publish a **Federal Register** notice establishing a nominal efficiency for the control technology.

(4) The Director may condition permission to take emission credits for use of the control technology on requirements that may be necessary to ensure operation and maintenance to achieve the specified nominal efficiency.

(5) In those cases where the owner or operator is seeking permission to take credit for use of a technology that is different in use or design from the reference control technology and the different technology will be used in no more than three applications, the information listed in paragraphs (h)(1)(i) through (h)(1)(iv) can be submitted to the operating permit authority for the source instead of the Director. In these instances, use and conditions for use of the different technology can be approved as part of an operating permit application or modification. In these instances, a **Federal Register** notice is not required to establish the nominal efficiency for the different technology.

(i) If, in reviewing the application, the operating permit authority believes the technology has broad applicability for use by other sources, the authority shall submit the information provided in the application to the Director of the EPA Office of Air Quality Planning and Standards. The Director shall review the technology for broad applicability and may publish a **Federal Register** notice; however, this EPA review shall not affect the operating permit authority's approval of the nominal efficiency of the technology for the specific application.

(ii) If, in reviewing an application for a process vent control, the operating permit authority determines that the technology is not different in use and design from the reference control technology, the authority shall submit the application to the Director of the EPA Office of Air Quality Planning and Standards. The procedures in paragraph (h)(6) of this section shall be followed for submission of information, review, and approval of the nominal efficiency. If, in reviewing an application for a control for an emission point other than a process vent, the operating permit authority determines the technology is not different in use or design from the reference control technology and is not a closed vent system for a storage vessel, the authority shall deny the application.

(6) An owner or operator seeking permission to take credit for a process vent using reference control technology that achieves a percent emission reduction efficiency higher than the percent assigned to the reference control technology in § 63.111 shall submit the information in paragraphs (h)(6)(i) through (h)(6)(iv) of this section to the Director of the EPA Office of Air Quality Planning and Standards. The procedures in paragraphs (h)(2) through (h)(4) of this section shall be followed for review and approval of the nominal efficiency of the control technology in the specified application.

(i) Emission stream characteristics of each process vent to which the control technology is or will be applied including the flow, organic HAP concentration, and all other vent stream characteristics necessary to design the control technology or determine its performance,

(ii) Description of the control technology including design specifications,

(iii) Documentation demonstrating to the Director's satisfaction that the technology in the intended application achieves 99.9 percent or greater emission reduction. This documentation shall include performance test data collected using an appropriate EPA method or any other method or data validated according to Method 301 of appendix A of this part.

(iv) A plan for instituting continuous emissions monitoring to demonstrate that 99.9 percent emission reduction is achieved on a continuous basis.

(i) The following procedures shall be used for calculating the efficiency (percent reduction) of pollution prevention measures:

(1) A pollution prevention measure is any practice which meets the criteria of paragraphs (i)(1)(i) and (ii) of this section.

(i) A pollution prevention measure is any practice which results in a lesser quantity of organic HAP emissions released to the atmosphere prior to out-of-process recycling, treatment, or control of emissions, while the same quantity of the same product is produced.

(ii) Pollution prevention measures may include substitution of non-toxic for toxic feedstocks in making a product; alterations to the production process to reduce the volume of materials released to the environment; equipment modifications; housekeeping measures; and in-process recycling that returns waste materials directly to production as raw materials.

(2) The emission reduction efficiency of pollution prevention measures implemented after 1987 can be used in calculating the actual emissions from an emission point in the debit and credit equations in § 63.150 (f) and (g) of this subpart.

(i) For pollution prevention measures, the percent reduction used in the equations in paragraphs (f)(2), (f)(3), (f)(4), and (f)(5) of this section, and paragraphs (g)(2), (g)(3), (g)(4), and (g)(5) of this section, is the percent difference between the monthly organic HAP emissions for each emission point after the pollution prevention measure for the most recent month versus monthly emissions from the same emission point before the pollution prevention measure, adjusted by the volume of product produced during the two monthly periods.

(ii) The following equation shall be used to calculate the percent reduction of a pollution prevention measure for each emission point.

$$E_B = \sum_{i=1}^{n} \left| (6.0 \cdot 10^{-8})\, Q_{Bi}\, H_{Bi} \sum_{m=1}^{s} Fe_m\, HAP_{Bim} \right|$$

where:

Percent reduction=Efficiency of pollution prevention measure (percent organic HAP reduction).

E_B=Monthly emissions before the pollution prevention measure, determined as specified in paragraph (i)(2)(ii)(A), (B), and (C) of this section.

E_{pp}=Monthly emissions after the pollution prevention measure, as determined for the most recent month, determined as specified in paragraph (i)(2)(ii)(C) or (D) of this section.

P_B=Monthly production before the pollution prevention measure, during the same period over which E_B is calculated.

P_{pp}=Monthly production after the pollution prevention measure, as determined for the most recent month.

(A) The monthly emissions before the pollution prevention measure, E_B, shall be determined in a manner consistent with the equations and procedures in paragraphs (f)(2), (f)(3), and (f)(4) of this section for process vents, storage vessels, and transfer operations.

(B) For wastewater, E_B shall be calculated as follows. In paragraph (i)(2)(ii)(B) of this section, the terms wastewater and wastewater stream are used to mean process wastewater.

$$\text{Percent reduction} = \frac{E_B - \frac{(E_{pp} \times P_B)}{P_{pp}}}{E_B} \times 100\%$$

where:

n=Number of wastewater streams.

Q_{Bi}=Average flow rate for wastewater stream (i) before the pollution prevention measure, as determined by the procedure in § 63.144(e)(3) of this Subpart, liters per minute, before implementation of the pollution prevention measure.

H_{Bi}=Number of hours per month that wastewater stream (i) was discharged before the pollution prevention measure, hours per month.

s=Total number of organic HAP compounds in wastewater stream (i).

Fe_m=Fraction emitted of HAP compound (m) in wastewater from Table 33 of this Subpart, dimensionless.

HAP_{Bim}=Average organic HAP concentration of compound (m) in wastewater stream (i), defined and determined according to paragraph (f)(5)(i) of this section, before the pollution prevention measure, in parts per million by weight, as measured before the implementation of the pollution measure.

(*1*) Values for Q_{Bi} and HAP_{Bim} may be determined during an initial performance test conducted under representative conditions, or

(*2*) Values for Q_{Bi} may be determined from records as specified in § 63.144(a) of this subpart, and values for HAP_{Bim} may be determined through process knowledge as specified in § 63.144(b) of this subpart.

(C) If the pollution prevention measure was implemented prior to the effective date of the regulation, records may be used to determine E_B.

(D) The monthly emissions after the pollution prevention measure, E_{pp}, may be determined by testing or by design analysis and documented engineering calculations. Once an emissions to production ratio has been established, this can be used to estimate monthly emissions from monthly production records.

(E) For wastewater, E_{pp} shall be calculated using the following equation. In paragraph (i)(2)(ii)(E) of this section, the terms wastewater and wastewater stream are used to mean process wastewater.

$$E_{pp} = \sum_{i=1}^{n} \left[(6.0 \cdot 10^{-8})\, Q_{ppi}\, H_{ppi} \sum_{m=1}^{s} Fe_m\, HAP_{ppim} \right]$$

where:

n, Q_{ppi}, H_{ppi}, s, Fe_m, and HAP_{ppim} are defined and determined as described above under the definition of E_B, except that Q_{ppi}, H_{ppi}, and HAP_{ppim} shall be determined after the pollution prevention measure has been implemented.

(iii) All equations, calculations, test procedures, test results, and other information used to determine the percent reduction achieved by a pollution prevention measure for each emission point shall be fully documented.

(iv) The same pollution prevention measure may reduce emissions from multiple emission points. In such cases, the percent reduction in emissions for each emission point must be calculated.

(v) For the purposes of the equations in paragraphs (g)(2), (g)(3), (g)(4), and (g)(5) of this section, used to calculate credits for emission points controlled more stringently than the reference technology in paragraphs (g)(2), (g)(3), (g)(4), and (g)(5) of this section, the nominal efficiency of a pollution prevention measure is equivalent to the percent reduction of the pollution prevention measure. When a pollution prevention measure is used, the owner or operator of a source is not required to apply to the Director for a nominal efficiency and is not subject to paragraph (h) of this section.

TABLE 20.—AVERAGE STORAGE TEMPERATURE (T_S) AS A FUNCTION OF TANK PAINT COLOR

Tank color	Average Storage Temperature (T_S)
White	T_A[a] + 0
Aluminum	T_A + 2.5
Gray	T_A + 3.5
Black	T_A + 5.0

[a] T_A is the average annual ambient temperature in degrees Fahrenheit.

TABLE 21.—PAINT FACTORS FOR FIXED ROOF TANKS

Tank color		Paint Factors (F_p) paint condition	
Roof	Shell	Good	Poor
White	White	1.00	1.15
Aluminum (specular)	White	1.04	1.18
White	Aluminum (specular)	1.16	1.24
Aluminum (specular)	Aluminum (specular)	1.20	1.29
White	Aluminum (diffuse)	1.30	1.38
Aluminum (diffuse)	Aluminum (diffuse)	1.39	1.46
White	Gray	1.30	1.38
Light gray	Light gray	1.33	1.44
Medium gray	Medium gray	1.40	1.58

TABLE 22.—AVERAGE CLINGAGE FACTORS (C)[a]

Liquid	Shell condition		
	Light rust[b]	Dense rust	Gunite lined
Gasoline	0.0015	0.0075	0.15
Single component stocks	0.0015	0.0075	0.15
Crude oil	0.0060	0.030	0.60

[a] Units for average clingage factors are barrels per 1,000 square feet.

[b] If no specific information is available, these values can be assumed to represent the most common condition of tanks currently in use.

TABLE 23.—TYPICAL NUMBER OF COLUMNS AS A FUNCTION OF TANK DIAMETER FOR INTERNAL FLOATING ROOF TANKS WITH COLUMN SUPPORTED FIXED ROOFS[a]

Tank diameter range (D in feet)	Typical number of columns, (N_c)
$0 < D \leq 85$	1
$85 < D \leq 100$	6
$100 < D \leq 120$	7
$120 < D \leq 135$	8
$135 < D \leq 150$	9
$150 < D \leq 170$	16
$170 < D \leq 190$	19
$190 < D \leq 220$	22
$220 < D \leq 235$	31
$235 < D \leq 270$	37
$270 < D \leq 275$	43
$275 < D \leq 290$	49
$290 < D \leq 330$	61
$330 < D \leq 360$	71
$360 < D \leq 400$	81

[a] Data in this table should not supersede information on actual tanks.

TABLE 24.—EFFECTIVE COLUMN DIAMETER (F_c)

Column type	F_c (feet)
9-inch by 7-inch built-up columns	1.1
8-inch-diameter pipe columns	0.7
No construction details known	1.0

TABLE 25.—SEAL RELATED FACTORS FOR INTERNAL FLOATING ROOF VESSELS

Seal type	K_S	n
Liquid mounted resilient seal:		
Primary seal only	3.0	0
With rim-mounted secondary seal[a]	1.6	0
Vapor mounted resilient seal:		
Primary seal only	6.7	0
With rim-mounted secondary seal[a]	2.5	0

[a] If vessel-specific information is not available about the secondary seal, assume only a primary seal is present.

TABLE 26.—SUMMARY OF INTERNAL FLOATING DECK FITTING LOSS FACTORS (K_F) and Typical Number of Fittings (N_F)

Deck fitting type	Deck fitting loss factor (K_F)[a]	Typical number of fittings (N_F)
Access hatch		1
Bolted cover, gasketed	1.6	
Unbolted cover, gasketed	11	
Unbolted cover, ungasketed	[b]25	
Automatic gauge float well		1
Bolted cover, gasketed	5.1	
Unbolted cover, gasketed	15	
Unbolted cover, ungasketed	[b]28	
Column well		(e)
Builtup column-sliding cover, gasketed	33	
Builtup column-sliding cover, ungasketed	[c]47	
Pipe column-flexible fabric sleeve seal	10	
Pipe column-sliding cover, gasketed	19	
Pipe column-sliding cover, ungasketed	32	
Ladder well		1
Sliding cover, gasketed	56	
Sliding cover, ungasketed	[b]76	
Roof leg or hanger well		[c]$(5+D/10+D^2/600)$
Adjustable	[b]7.9	
Fixed	0	
Sample pipe or well		1
Slotted pipe-sliding cover, gasketed	44	
Slotted pipe-sliding cover, ungasketed	57	
Sample well-slit fabric seal, 10 percent open area	[b]12	
Stub drain, 1-in diameter[d]	1.2	[c]$(D^2/125)$
Vacuum breaker		1
Weighted mechanical actuation, gasketed	[b]0.7	
Weighted mechanical actuation, ungasketed	0.9	

[a] Units for K_F are pound-moles per year.
[b] If no specific information is available, this value can be assumed to represent the most common/typical deck fittings currently used.
[c] D=Tank diameter (feet).
[d] Not used on welded contact internal floating decks.
[e] See Table 23.

TABLE 27.—DECK SEAM LENGTH FACTORS[a] (S_D) FOR INTERNAL FLOATING ROOF TANKS

Deck construction	Typical deck seam length factor
Continuous sheet construction[b]	
5-feet wide sheets	[c]0.2
6-feet wide sheets	0.17
7-feet wide sheets	0.14
Panel construction[d]	
5×7.5 feet rectangular	0.33
5×12 feet rectangular	0.28

[a] Deck seam loss applies to bolted decks only. Units for S_D are feet per square feet.
[b] $S_D=1/W$, where W=sheet width (feet).
[c] If no specific information is available, these factors can be assumed to represent the most common bolted decks currently in use.
[d] $S_D=(L+W)/LW$, where W=panel width (feet), and L=panel length (feet).

TABLE 28.—SEAL RELATED FACTORS FOR EXTERNAL FLOATING ROOF VESSELS

Seal type	Welded vessels		Riveted vessels	
	K_S	N	K_S	N
Metallic shoe seal:				
Primary seal only	1.2	1.5	1.3	1.5
With shoe-mounted secondary seal	0.8	1.2	1.4	1.2
With rim-mounted secondary seal	0.2	1.0	0.2	1.6
Liquid mounted resilient seal:				
Primary seal only	1.1	1.0	[a]NA	NA
With weather shield	0.8	0.9	NA	NA
With rim-mounted secondary seal	0.7	0.4	NA	NA
Vapor mounted resilient seal:				
Primary seal only	1.2	2.3	NA	NA
With weather shield	0.9	2.2	NA	NA
With rim-mounted secondary seal	0.2	2.6	NA	NA

[a] NA=Not applicable.

Table 29.—Roof Fitting Loss Factors,[a] K_{Fa}, K_{Fb}, and m, and Typical Number of Roof Fittings, N_T

Fitting type and construction details	Loss factors[b]			Typical number of fittings, N_T
	K_{Fa} (lb-mole/yr)	K_{Fb}(lb-mole/[mi/hr]^m-yr)	m (dimensionless)	
Access hatch (24-in-diameter well)	0	0	(c)0	1.
Bolted cover, gasketed	2.7	7.1	1.0	
Unbolted cover, ungasketed	2.9	0.41	1.0	
Unbolted cover, gasketed				
Unslotted guide-pole well (8-in-diameter unslotted pole, 21-in-diameter well).	0	6.7	0.98	1.
Ungasketed sliding cover	0	3.0	(c)	
Gasketed sliding cover				
Slotted guide-pole/sample well (8-in-diameter unslotted pole, 21-in-diameter well).				(d).
Ungasketed sliding cover, without float	0	310	1.2	
Ungasketed sliding cover, with float	0	29	2.0	
Gasketed sliding cover, without float	0	260	1.2	
Gasketed sliding cover, with float	0	8.5	2.4	
Gauge-float well (20-inch diameter)	2.3	5.9	(c).0	1.
Unbolted cover, ungasketed	2.4	0.34	1.0	
Unbolted cover, gasketed	0	0	0	
Bolted cover, gasketed				
Gauge-hatch/sample well (8-inch diameter)	0.95	0.14	(c)1.0	1.
Weighted mechanical actuation, gasketed	0.91	2.4	1.0	
Weighted mechanical actuation, ungasketed				
Vacuum breaker (10-inch-diameter well)	1.2	0.17	(c)1.0	N_{F7} (Table–30).
Weighted mechanical actuation, gasketed	1.2	3.0	1.0	
Weighted mechanical actuation, ungasketed				
Roof drain (3-inch diameter)				N_{F7} (Table–30).
Open	0	7.0		(c)1.4
90 percent closed	0.51	0.81	1.0	
Roof leg (3-inch diameter)				N_{F8} (Table–31[f]).
Adjustable, pontoon area	1.5	0.20		[c]1.0
Adjustable, center area	0.25	0.06		[c]1.0
Adjustable, double-deck roofs	.0	0.06	0	
Fixed		.7		
Roof leg (2½ inch diameter)	1.7	0	0	N_{F8} (Table–31[f]).
Adjustable, pontoon area	0.41	0	0	
Adjustable, center area	0.41	0	0	
Adjustable, double-deck roofs	0	0	0	
Fixed				
Rim vent (6-inch diameter)				[g]1.
Weighted mechanical actuation, gasketed	0.71	0.10	[c]1.0	
Weighted mechanical actuation, ungasketed	0.68	1.8	1.0	

[a] The roof fitting loss factors, K_{Fa}, K_{Fb}, and m, may only be used for wind speeds from 2 to 15 miles per hour.

[b] Unit abbreviations are as follows: lb=pound; mi=miles; hr=hour; yr=year.

[c] If no specific information is available, this value can be assumed to represent the most common or typical roof fittings currently in use.

[d] A slotted guide-pole/sample well is an optional fitting and is not typically used.

[e] Roof drains that drain excess rainwater into the product are not used on pontoon floating roofs. They are, however, used on double-deck floating roofs and are typically left open.

[f] The most common roof leg diameter is 3 inches. The loss factors for 2½ inch diameter roof legs are provided for use if this smaller size roof is used on a particular floating roof.

[g] Rim vents are used only with mechanical-shoe primary seals.

Table 30.—Typical Number of Vacuum Breakers, N_{F6} and Roof Drains,[a] N_{F7}

Tank diameter D (feet)[b]	No. of vacuum breakers, N_{F6}		No. of roof drains, N_{F7} (double-deck roof)[c]
	Pontoon roof	Double-deck roof	
50	1	1	1
100	1	1	1
150	2	2	2
200	3	2	3
250	4	3	5
300	5	3	7
350	6	4	[d]
400	7	4	[d]

[a] This table should not supersede information based on actual tank data.

[b] If the actual diameter is between the diameters listed, the closest diameter listed should be used. If the actual diameter is midway between the diameters listed, the next larger diameter should be used.

[c] Roof drains that drain excess rainwater into the product are not used on pontoon floating roofs. They are, however, used on double-deck floating roofs, and are typically left open.

[d] For tanks more than 300 feet in diameter, actual tank data or the manufacturer's recommendations may be needed for the number of roof drains.

Table 31.—Typical Number of Roof Legs,[a] N_{F8}

Tank diameter D (feet)[b]	Pontoon roof		No. of legs on double-deck roof
	No. of pontoon legs	No. of center legs	
30	4	2	6
40	4	4	7
50	6	6	8
60	9	7	10
70	13	9	13
80	15	10	16
90	16	12	20
100	17	16	25
110	18	20	29
120	19	24	34
130	20	28	40
140	21	33	46
150	23	38	52
160	26	42	58
170	27	49	66
180	28	56	74
190	29	62	82
200	30	69	90
210	31	77	98
220	32	83	107
230	33	92	115
240	34	101	127
250	34	109	138
260	36	118	149
270	36	128	162
280	37	138	173
290	38	148	186
300	38	156	200
310	39	168	213
320	39	179	226
330	40	190	240
340	41	202	255
350	42	213	270
360	44	226	285
370	45	238	300
380	46	252	315
390	47	266	330
400	48	281	345

[a] This table should not supersede information based on actual tank data.

[b] If the actual diameter is between the diameters listed, the closest diameter listed should be used. If the actual diameter is midway between the diameters listed, the next larger diameter should be used.

Table 32.—Saturation Factors

Cargo carrier	Mode of operation	S factor
Tank trucks and rail tank cars.	Submerged loading of a clean cargo tank.	0.50
	Submerged loading: dedicated normal service.	0.60
	Submerged loading: dedicated vapor balance service.	1.00
	Splash loading of a clean cargo tank.	1.45
	Splash loading: dedicated normal service.	1.45
	Splash loading: dedicated vapor balance service.	1.00

Table 33.—Fraction Removed (Fr) for HAP Compounds in Wastewater Streams

Chemical name	Fr
Acetaldehyde	1.000
Acetonitrile	0.934
Acetophenone	0.920
Acrolein	0.957
Acrylonitrile	0.960
Allyl chloride	1.000
Aniline	0.468
Benzene	1.000
Benzyl chloride	1.000
Biphenyl	1.000
Bromoform	1.000
1,3-Butadiene	1.000
Carbon disulfide	1.000
Carbon tetrachloride	1.000
2-Chloroacetophenone	0.939
Chlorobenzene	1.000
Chloroform	1.000
Chloroprene (2-Chloro-1,3-Butadiene)	1.000
o-Cresol	0.448
Cumene (isopropyl benzene)	1.000
1,4-Dichlorobenzene(p)	1.000
Dichloroethyl ether	0.935
1,3-Dichloropropene	1.000
N,N-Dimethylaniline	0.927
Diethyl sulfate	0.814
3,3′-Dimethylbenzidine	0.635
1,1-Dimethylhydrazine	0.448
Dimethyl sulfate	0.697
2,4-Dinitrophenol	0.908
2,4-Dinitrotoluene	0.626
1,4-Dioxane (1,4-Diethyleneoxide)	0.787
Epichlorohydrin(1-Chloro-2,3-epoxypropane)	0.890
Ethyl acrylate	0.961
Ethylbenzene	1.000
Ethyl chloride (Chloroethane)	1.000
Ethylene dibromide	1.000
Ethylene dichloride (1,2-Dichloroethane)	1.000
Ethylene oxide	1.000
Ethylidene dichloride (1,1-Dichloroethane)	1.000
Diethylene glycol dimethyl ether	0.425
Ethylene glycol monomethyl ether acetate	0.529
Ethylene glycol dimethyl ether	0.943
Diethylene glycol diethyl ether	0.523
Ethylene glycol monobutyl ether acetate	0.927
Ethylene glycol monoethyl ether acetate	0.470
Hexachlorobenzene	1.000
Hexachlorobutadiene	1.000
Hexachloroethane	1.000
Hexane	1.000
Isophorone	0.945
Methanol	0.829
Methyl bromide (Bromomethane)	1.000
Methyl chloride (Chloromethane)	1.000
Methyl chloroform (1,1,1-Trichloroethane)	1.000
Methyl ethyl ketone (2-Butanone)	1.000
Methyl isobutyl ketone (Hexone)	1.000
Methyl methacrylate	0.958
Methyl tert-butyl ether	1.000
Methylene chloride (Dichloromethane)	1.000
Naphthalene	1.000
Nitrobenzene	0.936
2-Nitropropane	1.000
Phosgene	1.000
Propionaldehyde	0.952
Propylene dichloride (1,2-Dichloropropane)	1.000
Propylene oxide	1.000
Styrene	1.000
1,1,2,2-Tetrachloroethane	1.000
Tetrachloroethylene (Perchloroethylene)	1.000
Toluene	1.000
o-Toluidine	0.487
1,2,4-Trichlorobenzene	1.000
1,1,2-Trichloroethane	1.000
Trichloroethylene	1.000
2,4,5-Trichlorophenol	0.914
Triethylamine	1.000
2,2,4-Trimethylpentane	1.000
Vinyl acetate	1.000
Vinyl chloride	1.000
Vinylidene chloride (1,1-Dichloroethylene)	1.000
m-Xylene	1.000
o-Xylene	1.000
p-Xylene	1.000

§ 63.151 Initial notification and implementation plan.

(a) Each owner or operator of a source subject to this Subpart shall submit the reports listed in paragraphs (a)(1) through (a)(5) of this section. Owners or operators requesting an extension of compliance shall also submit the report listed in paragraph (a)(6) of this section.

(1) An Initial Notification described in paragraph (b) of this section, and

(2) An Implementation Plan, unless an application for an operating permit has been submitted prior to the date the Implementation Plan is due.

(i) The submittal date and contents of the Implementation Plan for emission points to be included in an emissions average are specified in paragraphs (c) and (d) of this section.

(ii) The submittal date and contents of the Implementation Plan for emission points that will not be included in an emissions average are specified in paragraphs (c) and (e) of this section.

(3) A Notification of Compliance Status described in § 63.152 of this Subpart,

(4) Periodic Reports described in § 63.152 of this Subpart, and

(5) Other reports described in § 63.152 of this Subpart.

(6) Pursuant to section 112(d) of the Act, an owner or operator may request an extension allowing the source up to 1 additional year to comply with Section 112(d) standards.

(i) For purposes of this subpart, a request for an extension shall be submitted to the operating permit authority as part of the operating permit application. If the State in which the source is located does not have an approved operating permit program, a request for an extension shall be submitted to the Administrator as part of the Initial Notification or as a separate submittal. Requests for extensions shall be submitted no later than the date the Implementation Plan is required to be submitted. The dates specified in § 63.6(i) of subpart A[17] for submittal of requests for extensions shall not apply to sources subject to subpart G.

(ii) A request for an extension of compliance must include the data described in § 63.6(i)(6)(i) through (i)(6)(iii) of subpart A.[18]

(iii) The requirements in § 63.6(i)(8) through (i)(14) of subpart A[19] will govern the review and approval of requests for extensions of compliance with this Subpart.

(b) Each owner or operator of an existing or new source subject to subpart G shall submit a written Initial Notification to the Administrator, containing the information described in paragraph (b)(1), according to the schedule in paragraph (b)(2) of this section. The Initial Notification provisions in § 63.9(b)(2), (b)(3), and (b)(6) of subpart A[20] shall not apply to owners or operators of sources subject to subpart G.

(1) The Initial Notification shall include the following information:

(i) The name and address of the owner or operator;

(ii) The address (physical location) of the affected source;

(iii) An identification of the provisions included in subpart G that are the basis of the notification;

(iv) An identification of the chemical manufacturing processes subject to subpart G;

(v) A statement of whether the source can achieve compliance by the relevant compliance date specified in § 63.100(f) of subpart F; and

(vi) If the owner or operator requests to be exempt from the HON because the source is an area source as defined by section 112(a)(2) of the Clean Air Act as amended in 1990, an analysis demonstrating that the source is an area source.

(2) The Initial Notification shall be submitted according to the schedule in paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this section, as applicable.

(i) For a source that has an initial startup prior to the date of promulgation of this subpart, the Initial Notification shall be submitted within 120 days after the date of promulgation.

(ii) For a source that commences construction or reconstruction after the date of promulgation of this Subpart, the Initial Notification shall be submitted at least 180 days before the construction or reconstruction is planned to commence (but it need not be sooner than 45 days after the date of promulgation of this subpart).

(iii) For a source that commences construction or reconstruction on or prior to the date of promulgation of this Subpart but has an initial startup after the date of promulgation, the Initial Notification shall be submitted within 45 days after the date of promulgation of this Subpart.

(c) Each owner or operator of an existing or new source subject to this Subpart who has not submitted an operating permit application must submit an Implementation Plan to the Administrator by the dates specified in paragraphs (c)(1) and (c)(2). The Implementation Plan for emissions averaging is subject to Administrator approval.

(1) For existing sources, an Implementation Plan shall be submitted as specified in paragraphs (c)(1)(i) and (c)(1)(ii).

(i) Each owner or operator of an existing source subject to this Subpart who elects to comply with § 63.112 by using emissions averaging for any emission points, and who has not submitted an operating permit application at least 18 months prior to the compliance dates specified in § 63.100(f) of subpart F, shall develop an Implementation Plan for emissions averaging. For existing sources, the Implementation Plan for those emission points to be included in an emissions average shall be submitted no later than 18 months prior to the compliance dates in § 63.100(f) of subpart F.

(ii) Each owner or operator of an existing source subject to this subpart who elects to comply with § 63.112 of this subpart by complying with the provisions of §§ 63.113 to 63.147 of this Subpart, rather than emissions averaging, for any emission points, and who has not submitted an operating permit application at least 12 months prior to the compliance dates specified in § 63.100(f) of subpart F, shall develop an Implementation Plan. For an existing source, the Implementation Plan for those emission points that are not to be included in an emissions average shall be submitted to the Administrator no later than 12 months prior to the compliance dates in § 63.100(f) of subpart F.

(2) For new sources, an Implementation Plan shall be submitted as specified in paragraph (c)(2)(i) and (c)(2)(ii).

(i) Each owner or operator of a new source who elects to comply with § 63.112 of this Subpart by using emissions averaging for any emission points shall submit an Implementation Plan for emissions averaging with the Initial Notification by the date specified in paragraph (b)(2)(ii) or (b)(2)(iii) of this section, as applicable, unless an operating permit application containing the information in paragraphs (d)(1) through (d)(8) of this section has been submitted by that date.

(ii) Each owner or operator of a new source who elects to comply with § 63.112 of this subpart by complying with the provisions of §§ 63.113 to 63.147 of this Subpart for any emission points shall submit an Implementation Plan with the Initial Notification by the date specified in paragraph (b)(2)(ii) or (b)(2)(iii) of this section, as applicable, unless an operating permit application containing the information in paragraphs (e)(1) through (e)(5) of this section has been submitted by that date.

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[17] The EPA will propose subpart A in the future.

[18] See Footnote 17.

[19] See Footnote 17.

[20] The EPA will propose subpart A in the future.

(3) The Administrator shall determine within 120 days whether the Implementation Plan submitted by sources using emissions averaging presents sufficient information. The Administrator shall either approve the Implementation Plan, request changes, or request that the owner or operator submit additional information. Once the Administrator receives sufficient information, the Administrator shall approve or request changes to the plan within 120 days.

(d) Each owner or operator required to submit an Implementation Plan for emissions averaging shall include in the plan the information listed in paragraphs (d)(1) through (d)(8) of this section for all emission points included in the emissions average. All Group 1 and Group 2 emission points in an emissions average shall perform monitoring, recordkeeping, and reporting, equivalent to that required for Group 1 points under §§ 63.113 through 63.147.

(1) The identification of all emission points in an emissions average and notation of whether each point is a Group 1 or Group 2 emission point as defined in § 63.111 of this Subpart.

(2) The projected emission debits and credits for each point and the sum for the points involved in the average calculated according to § 63.150 of this subpart. The projected credits must be greater than the projected debits, as required under § 63.150(e)(3) of this subpart.

(3) The specific control technology or pollution prevention measure that will be used for each emission point included in the average and date of application or expected date of application.

(4) To be considered a pollution prevention measure, the criteria in § 63.150(i)(1) of this subpart must be met. If the same pollution prevention measure reduces or eliminates emissions from multiple emission points in the average, the owner or operator must identify each of these emission points.

(5) For each process vent included in the average, the owner or operator shall document the following information:

(i) The estimated flow rate, organic HAP concentration, or TRE index value used to determine whether the vent is Group 1 or Group 2. Where TRE index value is used for group determination, the estimated or measured values of the parameters used in the TRE equation in § 63.115(d) of this Subpart (flow rate, organic HAP emission rate, TOC emission rate, and net heating value) and the resulting TRE index value shall be submitted.

(ii) The estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.150 (f)(2) and (g)(2) of this Subpart.

(iii) The estimated percent reduction if a control technology achieving less than or equal to 98 percent emission reduction or a pollution prevention measure is or will be applied to the process vent.

(iv) The anticipated nominal efficiency if a control technology achieving greater than 98 percent emission reduction is or will be applied to the process vent. The procedures in § 63.150(h) shall be followed to apply for a nominal efficiency.

(v) A written statement certifying that, beginning on the compliance date, records of all information required for calculation of emission debits and credits will be kept.

(vi) A written statement certifying that, beginning on the compliance date, the source will implement the following testing, monitoring, recordkeeping, and reporting procedures for each vent equipped with a flare, incinerator, boiler, or process heater:

(A) Determine whether the vent is Group 1 or Group 2 according to the procedures in § 63.115.

(B) Conduct initial performance tests to determine percent reduction as specified in § 63.116 of this Subpart;

(C) Monitor the operating parameters, keep records, and submit reports specified in §§ 63.114(a) and (d), 63.117(a), and 63.118(a), (f), and (g) of this Subpart, as appropriate for the specific control device.

(vii) A written statement certifying that, beginning on the compliance date, the source will implement the following procedures for each vent equipped with a carbon adsorber, absorber, or condenser but not equipped with a control device:

(A) Determine the flow rate, organic HAP concentration, and TRE index value using the methods specified in § 63.115 of this Subpart;

(B) Monitor the operating parameters, keep records, and submit reports specified in §§ 63.114(b), § 63.117(a), and § 63.118(b), (f), and (g) of this Subpart, as appropriate for the specific recovery device.

(viii) For each process vent controlled by a pollution prevention measure, or equipped with a device other than a flare, incinerator, boiler, process heater, adsorber, condenser, or absorber, the information specified in § 63.151(f) of this Subpart shall be included in the Implementation Plan.

(6) For each storage vessel included in the average, the owner or operator shall document the following information:

(i) The storage vessel capacity and the estimated vapor pressure of the liquid stored used to determine whether the storage vessel is a Group 1 or Group 2 storage vessel.

(ii) The estimated values of all parameters needed for input to the storage emissions credit and debit calculations in § 63.150(f)(3) and (g)(3) of this Subpart.

(iii) The estimated percent reduction if a control technology achieving less than or equal to 95 percent emission reduction or a pollution prevention measure is or will be applied to the storage vessel.

(iv) The anticipated nominal efficiency if a control technology achieving greater than 95 percent emission reduction is or will be applied to the storage vessel. The procedures in § 63.150(h) of this subpart shall be followed to apply for a nominal efficiency.

(v) A written statement certifying that, beginning on the compliance date, records of all information required for calculation of emission debits and credits will be kept.

(vi) A written statement certifying that, beginning on the compliance date, for each storage vessel controlled with an internal floating roof, external roof, or a closed vent system with a control device, the source will implement the following procedures, as appropriate to the control technique:

(A) Perform the monitoring or inspection procedures in § 63.120 of this subpart,

(B) Perform the reporting and recordkeeping procedures in §§ 63.122 and 63.123 of this subpart, and

(C) For closed vent systems with control devices, conduct an initial design evaluation and submit an operating plan as specified in § 63.120(d) and § 63.122(a)(2) and (b) of this Subpart.

(vii) For each storage vessel controlled by a pollution prevention measure or control technique other than an internal or external floating roof or closed vent system with a control device, the information specified in § 63.151(f) of this Subpart shall be included in the Implementation Plan.

(7) For each transfer rack included in the average, the owner or operator shall document the following information:

(i) The estimated annual weighted average rack vapor pressure and projected annual throughput of liquid containing organic HAP's used to determine whether the transfer rack is a Group 1 or Group 2 transfer rack.

(ii) The estimated values of all parameters needed for input to the transfer emission credit and debit calculations in § 63.150(f)(4) and (g)(4) of this Subpart.

(iii) The estimated percent reduction if a control technology achieving less than or equal to 98 percent emission reduction or a pollution prevention measure is or will be applied to the transfer rack.

(iv) The anticipated nominal efficiency if a control technology achieving greater than 98 percent emission reduction is or will be applied to the transfer rack. The procedures in § 63.150(h) of this Subpart shall be followed to apply for a nominal efficiency.

(v) A written statement certifying that, beginning on the compliance date, records of all information required for calculation of emission debits and credits will be kept.

(vi) A written statement certifying that, beginning on the compliance date, for each transfer rack controlled with a vapor balancing system, or a vapor collection system and an incinerator, flare, boiler, process heater, adsorber, condenser, or absorber, the source will implement the following procedures, as appropriate to the control technique:

(A) The monitoring and inspection procedures in §§ 63.126 and 63.127 of this subpart,

(B) The testing and compliance procedures in § 63.128 of this subpart, and

(C) The reporting and recordkeeping procedures in §§ 63.129 and 63.130 of this subpart.

(vii) For each transfer rack controlled by a pollution prevention measure or a control device other than those listed in paragraph (d)(7)(vi) of this section, the information specified in § 63.151(f) of this subpart shall be included in the Implementation Plan.

(8) For each process wastewater stream included in the average, the owner or operator shall document the following information:

(i) The information specified in Table 14a for wastewater streams at new sources and in Table 14b for wastewater streams at new and existing sources used to determine whether the wastewater stream is a Group 1 or Group 2 wastewater stream.

(ii) The estimated values of all parameters needed for input to the wastewater emission credit and debit calculations in § 63.150(f)(5) and (g)(5) of this Subpart.

(iii) The estimated percent reduction if:

(A) A control technology that achieves an emission reduction less than or equal to the emission reduction achieved by the design steam stripper, as specified in § 63.138(f) of this subpart, is or will be applied to the wastewater stream, or

(B) A control technology achieving less than or equal to 95 percent emission reduction is or will be applied to the vapor stream(s) vented and collected from the treatment processes, or

(C) A pollution prevention measure is or will be applied.

(iv) The anticipated nominal efficiency if the owner or operator plans to apply for a nominal efficiency under § 63.150(h) of this subpart. A nominal efficiency shall be applied for if:

(A) A control technology is or will be applied to the wastewater stream and achieves an emission reduction greater than the emission reduction achieved by the design steam stripper as specified in § 63.138(f) of this subpart, or

(B) A control technology achieving greater than 95 percent emission reduction is or will be applied to the vapor stream(s) vented and collected from the treatment processes.

(v) A written statement certifying that, beginning on the compliance date, records of all information required for calculation of emission debits and credits will be kept.

(vi) A written statement that, beginning on the compliance date, the source will implement the following procedures, as appropriate, to the control techniques:

(A) For wastewater tanks, surface impoundments, containers, individual drain systems, oil-water separators and closed vent systems and control devices, conduct tests as specified in § 63.145(e) of this subpart.

(B) For wastewater treatment processes, conduct tests as specified in §§ 63.138(h) and (i) of this subpart.

(C) Conduct inspections and monitoring as specified in § 63.143 of this subpart.

(D) A recordkeeping program as specified in § 63.147 of this subpart.

(E) A reporting program as specified in § 63.146 of this subpart.

(vii) For each pollution prevention measure, treatment process, or control device used to reduce air emissions of organic HAP's from wastewater and for which no monitoring parameters or inspection procedures are specified in § 63.143 of this subpart, the information specified in § 63.151(f) of this subpart shall be included in the Implementation Plan.

(e) An owner or operator required to submit an Implementation Plan shall include in the Implementation Plan the information listed in paragraphs (e)(1) through (e)(5) of this section for emission points that are not included in an emissions average.

(1) A list designating each emission point complying with §§ 63.113 to 63.147 of this subpart.

(i) Whether each emission point is Group 1 or Group 2.

(ii) For process wastewater, the information specified in Table 14a for wastewater streams at new sources and in Table 14b for wastewater streams at new and existing sources.

(2) The control technology or method of compliance that will be applied to each Group 1 emission point.

(3) A written statement certifying that the compliance demonstration, monitoring, inspection, recordkeeping, and reporting provisions in §§ 63.113 through 63.147 of this subpart that are applicable to each emission point will be implemented beginning on the date of compliance.

(4) The operating plan required in § 63.122(a)(2) and (b) of this subpart for each storage vessel controlled with a closed vent system with a control device other than a flare.

(5) The monitoring information in § 63.151(f) of this subpart if, for any emission point, the owner or operator of a source seeks to:

(i) Comply through use of a control device or method other than those for which monitoring parameters are specified in § 63.114 for process vents, § 63.127 for transfer, and § 63.143 for process wastewater, or

(ii) Monitor a parameter other than those specified in §§ 63.114, 63.127, or 63.143 of this subpart.

(f) The owner or operator who has been directed by any other section of this Subpart to set unique monitoring parameters or who requests approval to monitor a different parameter than those listed in § 63.114 for process vents, § 63.127 for transfer, or § 63.143 for process wastewater shall submit the following information with the Implementation Plan required in § 63.151(c), (d), and (e) of this subpart:

(1) A description of the parameter(s) to be monitored to ensure the control technology is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(2) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device, and the schedule for this demonstration. The owner or operator must certify that they will establish a range for the monitored parameter as part of the Notification of Compliance

Status report required in § 63.152(b) of this subpart, or the operating permit application, whichever occurs first.

(3) The frequency and content of monitoring, recording, and reporting if monitoring and recording is not continuous, or if reports of 3-hour periods when the monitored parameter value is outside the range established in the operating permit or Notification of Compliance Status will not be included in Periodic Reports required under § 63.152(c) of this subpart. The rationale for the proposed monitoring, recording, and reporting system shall be included.

(g) The owner or operator required to prepare an Implementation Plan under paragraph (c), (d), or (e) of this section shall also prepare a supplement to the Implementation Plan for any alternative controls or operating scenarios that may be used to achieve compliance.

(h) The owner or operator of a source required to submit an Implementation Plan under paragraph (c), (d), or (e) of this section shall also submit written updates of the Implementation Plan to the Administrator under the circumstances described in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this section unless the relevant information has been included and submitted in an operating permit application. The written updates to the Implementation Plan shall be submitted within 90 days of the process change or the change in the planned method of achieving compliance.

(1) Whenever a process change is made such that the group status of any emission point changes.

(2) Whenever a value of a parameter in the emission credit or debit equations in § 63.150(f) or (g) changes such that it is outside the range specified in the Implementation Plan and causes a decrease in the projected credits or an increase in the projected debits.

(3) Whenever an owner or operator elects to achieve compliance with this subpart by using a control technique other than that specified in the Implementation Plan or plans to monitor a different parameter or operate a control device in a manner other than that specified in the Implementation Plan.

(4) Whenever a new emission point is added to a source, a written addendum to the implementation program containing information on the new emission point shall be submitted.

(i) If the new emission point will be included in an emissions average, the information in paragraph (d) of this section shall be included.

(ii) If the new emission point will not be included in an emissions average, the information in paragraph (e) of this section shall be included.

§ 63.152 General reporting.

(a) The owner or operator of a source subject to this Subpart shall submit the reports listed in paragraphs (a)(1) through (a)(5) of this section. Owners or operators requesting an extension of compliance shall also submit the report described in § 63.151(a)(6) of this subpart.

(1) An Initial Notification described in § 63.151(b) of this Subpart.

(2) An Implementation Plan described in § 63.151(c), (d), and (e) of this subpart, unless an application for an operating permit has been submitted prior to the date the Implementation Plan is due.

(3) A Notification of Compliance Status described in paragraph (b) of this section.

(4) Periodic Reports described in paragraph (c) of this section.

(5) Other reports described in paragraphs (d) and (e) of this section.

(b) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status within 150 days of the compliance dates specified in § 63.100(f) of subpart F.

(1) The notification shall include the results of any emission point group determinations, performance tests, inspections, continuous monitoring system performance evaluations, values of monitored parameters established during performance tests, and any other information used to demonstrate compliance or required to be included in the Notification of Compliance Status under § 63.117 for process vents, § 63.122 for storage vessels, § 63.129 for transfer operations, § 63.146 for process wastewater, and § 63.150 for emission points included in an emissions average.

(i) For performance tests and group determinations that are based on measurements, the Notification of Compliance Status shall include one complete test report for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other information required in § 63.117 for process vents, § 63.129 for transfer, and § 63.146 for process wastewater shall be submitted, but a complete test report is not required.

(ii) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(2) For each monitored parameter for which a range is required to be established under § 63.114 for process vents, § 63.120(d) for storage, § 63.127 for transfer, § 63.143(f) for process wastewater, § 63.151 (c), (d), (e), or (f), or § 63.152(e) of this Subpart, the Notification of Compliance Status shall include the information in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this section, unless the range has been established in the operating permit.

(i) The specific range of the monitored parameter(s) for each emission point;

(ii) The rationale for the specific range for each parameter and emission point, including any data and calculations used to develop the range and a description of why the range indicates proper operation of the control device.

(iii) A definition of the source's operating day for purposes of determining daily average values of monitored parameters. The definition shall specify the times at which an operating day begins and ends.

(3) For emission points included in an emissions average, the Notification of Compliance Status shall include the values of all parameters needed for input to the emission credit and debit equations in § 63.150 (f) and (g), calculated or measured according to the procedures in § 63.150 (f) and (g), and the resulting calculation of credits and debits for the first quarter of the year. The first quarter begins on the compliance date specified in § 63.100(f) of subpart F.

(c) The owner or operator of a source subject to this subpart shall submit Periodic Reports.

(1) Except as specified under paragraph (c)(4) and (c)(5) of this section, a report containing the information in paragraphs (c)(2) and (c)(3) of this section shall be submitted semiannually no later than 60 days after the end of each 6-month period. The first report shall be submitted no later than 8 months after the compliance dates specified in § 63.100(f) of subpart F.

(2) For an owner or operator of a source complying with the provisions of §§ 63.113 through 63.147 of this subpart for any emission points, Periodic Reports shall include all information specified in §§ 63.117 and 63.118 for process vents, § 63.122 for storage vessels, §§ 63.129 and 63.130 for transfer operations, and § 63.146 for

process wastewater, including reports of periods when monitored parameters are outside their established ranges.

(i) For each parameter or parameters required to be monitored for a control device, the owner or operator shall establish a range of parameter values to ensure that the device is being applied, operated and maintained properly. As specified in paragraph (b)(2) of this section, these parameter values and the definition of an operating day shall be approved as part of and incorporated into the source's Notification of Compliance Status or operating permit, as appropriate.

(ii) The parameter monitoring data for Group 1 emission points and emission points included in emissions averages shall be used to determine compliance with the required operating conditions for the control device. Except for excusable periods during the operation of the control device, if daily average values for a monitored parameter are outside the permitted range, the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions.

(A) For each emission point, the first (3 to 6) days during each semiannual reporting period on which the daily average values of one or more monitored parameters are outside the established ranges shall be excusable periods. (A range of 3 to 6 days is proposed; a single number will be selected at promulgation.)

(B) If a monitored parameter is outside its established range during startup, shutdown, or malfunction, and the source is operated during such periods in accordance with the source's startup, shutdown, and malfunction plan as required by § 63.6(e)(3) of subpart A,[21] then the monitoring parameter excursion does not count toward the excusable periods for determining compliance and is not a violation.

(C) Nothing in paragraph (c)(2)(ii) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other provisions of subparts A, F, or G of this part.

(iii) Periodic Reports shall include both excusable and unexcused periods when monitored parameters are outside their established ranges.

(3) If any performance tests are reported in a Periodic Report, the following information shall be included:

(i) One complete test report shall be submitted for each test method used for a particular kind of emission point tested. A complete test report shall contain the information specified in paragraph (b)(1)(ii) of this section.

(ii) For additional tests performed for the same kind of emission point using the same method, results and any other information required in § 63.117 for process vents, § 63.129 for transfer, and § 63.146 for process wastewater shall be submitted, but a complete test report is not required.

(4) The owner or operator of a source shall submit quarterly reports for all emission points included in an emissions average.

(i) The quarterly reports shall be submitted no later than 60 days after the end of each quarter. The first report shall be submitted no later than 5 months after the compliance date specified in § 63.100(f) of subpart F.

(ii) The quarterly reports shall include the information specified in this paragraph for all emission points included in an emissions average.

(A) The credits and debits calculated each month during the quarter;

(B) A demonstration that debits calculated for the quarter are not more than 1.25 times the credits calculated for the quarter, as required under § 63.150(e)(4).

(C) The values of any inputs to the credit and debit equations in § 63.150 (f) and (g) of this Subpart that change from month to month during the quarter or that have changed since the previous quarter;

(D) Results of any performance tests conducted during the reporting period including one complete report for each test method used for a particular kind of emission point as described in paragraph (c)(2) of this section;

(E) Reports of periods when values of the monitoring parameters specified in the operating permit or the Implementation Plan required under § 63.151 (c) and (d) of this Subpart are outside the range established in the operating permit or the Notification of Compliance Status; and

(F) Any other information the source is required to report under the operating permit or Implementation Plan for the source.

(iii) Paragraphs (c)(2)(i) through (c)(2)(iii) of this section shall govern the use of monitoring data to determine compliance for Group 1 and Group 2 points included in emissions averages, except that paragraph (c)(2)(ii)(A) shall not apply. For each emission point included in an emissions average, the first (1 to 3) days during each quarterly reporting period on which the daily average values of one or more monitored parameters are outside the ranges established in the operating permit or Notification of Compliance Status shall be excusable periods. (A range of 1 to 3 days is proposed; a single number will be selected at promulgation.)

(iv) Every fourth quarterly report shall include the following:

(A) A demonstration that annual credits are greater than or equal to annual debits as required by § 63.150(e)(3) of this Subpart;

(B) If bankable credits have been generating during the annual reporting period, data used to calculate that bankable credits were generated, and a certification of the accuracy of the data, as required by § 63.150(e)(3)(i) of this Subpart; and

(C) A certification of compliance with all the emissions averaging provisions in § 63.150 of this Subpart.

(5) The owner or operator of a source shall submit reports quarterly for particular emission points not included in an emissions average under the circumstances described in this paragraph.

(i) The owner or operator of a source subject to this Subpart shall submit quarterly reports for a period of one year for an emission point that is not included in an emissions average if:

(A) The total duration of periods when monitored parameter values for the emission point are outside the range established in the operating permit or Notification of Compliance Status is greater than 1 percent of the operating time for a semiannual reporting period or the continuous monitoring system downtime is greater than 5 percent of the total operating time for the reporting period, and

(B) The Administrator requests the owner or operator to submit quarterly reports for the emission point.

(ii) The quarterly reports shall include all information in paragraphs (c)(2) and (3) of this section applicable to the emission point(s) for which quarterly reporting is required under paragraph (c)(4)(i) of this section. Information applicable to other emission points within the source shall be submitted in the semiannual reports required under paragraph (c)(1) of this section.

(iii) Quarterly reports shall be submitted no later than 60 days after the end of each quarter.

(iv) After quarterly reports have been submitted for an emission point for one year, the owner or operator may return to semiannual reporting for the emission point unless the Administrator requests the owner or operator to continue to submit quarterly reports.

(v) Paragraphs (c)(2)(i) through (c)(2)(iii) of this section shall govern the use of monitoring data to determine compliance for Group 1 emission points, except that paragraph (c)(2)(ii)(A) shall not apply. For each emission point subject to quarterly reporting, the first (1 to 3) days during each quarterly reporting period on which the daily average values of one or more monitored parameters are outside the ranges established in the operating permit or Notification of Compliance Status shall be excusable periods. (A range of 1 to 3 days is proposed; a single number will be selected at promulgation.)

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[21] The EPA will propose subpart A in the future.

(d) Other reports shall be submitted as specified in subpart A of this part or in §§ 63.113 through 63.151 of this subpart. These reports are:

(1) Reports of startup, shutdown, and malfunction required by § 63.10(d)(5) of subpart A;[22].

(2) For process vents, reports of process changes required under § 63.118(g), (h), (i), and (j) of this Subpart;

(3) For storage vessels, requests for extensions of repair as specified in § 63.120(a)(4), (b)(7)(ii), and (b)(8) of this Subpart, and the notifications of inspections required under § 63.120(a)(5), (a)(6), (b)(9), and (b)(10) of this Subpart;

(4) For process wastewater, requests for extensions for emptying a wastewater tank as specified in § 63.133(e)(2).

(5) For owners or operators of sources required to request approval for a nominal control efficiency for use in calculating credits for an emissions average, the information specified in § 63.150(h) of this Subpart.

(e) An owner or operator who submits an operating permit application instead of an Implementation Plan shall submit the following information with the operating permit application:

(1) The information specified in § 63.151(f) for any emission points for which the owner or operator requests approval to monitor a unique parameter, and

(2) The information specified in § 63.151(d) for points included in an emissions average.

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants From Synthetic Organic Chemical Manufacturing Industry Equipment Leaks

§ 63.160 Applicability and designation of sources.

(a) The provisions of this subpart apply to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, product accumulator vessels, instrumentation systems, and control devices or systems required by this subpart that are intended to operate in volatile hazardous air pollutant service 300 hours or more during the calendar year within a process unit listed in:

(1) Paragraph (b) of this section that uses as a reactant or makes as an intermediate or final product any of the chemicals listed in § 63.183, or

(2) Paragraph (c) of this section.

(b)(1) The provisions of this subpart are applicable to the following process units as listed in § 63.184 on and after the designated dates:

(i) Group I: *(½ year after promulgation)*.

(ii) Group II: *(¾ year after promulgation)*.

(iii) Group III: *(1 year after promulgation)*.

(iv) Group IV: *(1 ¼ years after promulgation)*.

(v) Group V: *(1½ years after promulgation)*.

(2) The owner or operator of an affected process unit in a later group may elect to apply the applicability date of an earlier group.

(3) Any process unit listed in § 63.184 that does not use as a reactant or make as an intermediate or final product any of the chemicals listed in § 63.183 is exempt from the provisions in §§ 63.162 through 63.174. The owner or operator shall maintain records as required in § 63.181(k).

(c) The provisions of this subpart apply *(1/2 year after promulgation)* to the following process units, and designated volatile hazardous air pollutants only, as defined in § 63.161:

(1) Styrene-butadiene rubber production (butadiene, styrene).

(2) Polybutadiene production (butadiene).

(3) Chlorine production (carbon tetrachloride).

(4) Pesticide production (carbon tetrachloride, methylene chloride, ethylene dichloride).

(5) Chlorinated hydrocarbon use (carbon tetrachloride, methylene chloride, tetrachloroethylene, chloroform, and ethylene dichloride).

(6) Pharmaceutical production (carbon tetrachloride, methylene chloride).

(7) Miscellaneous butadiene use (butadiene).

(d) While the provisions of this subpart are effective, equipment to which this subpart applies that are also subject to the provisions of:

(1) 40 CFR part 60 of this chapter, will be required to comply only with the provisions of this subpart, except for each pump and compressor equipped with a dual mechanical seal system that is in volatile organic compound service, or

(2) 40 CFR part 61 of this chapter, will be required to comply only with the provisions of this subpart.

(e) The provisions of this subpart do not apply to any petroleum process unit regardless of whether the unit supplies feedstocks, that include chemicals listed in § 63.183, to chemical processes that are subject to the provisions of this subpart.

§ 63.161 Definitions.

All terms used in this subpart shall have the meaning given them in the Act, in subpart A of 40 CFR part 63,[1] and in this section as follows:

Batch process means a process in which the equipment is fed intermittently or discontinuously. Processing then occurs in this equipment after which the equipment is generally emptied. Examples of industries that use batch processes include pharmaceutical production and pesticide production.

Batch product-process equipment train means the collection of equipment (e.g., connectors, reactors, valves, pumps, etc.) configured to produce a specific product or intermediate by a batch process.

Chlorinated hydrocarbon use means a process that produces one or more of the following products using chloroform, carbon tetrachloride, ethylene dichloride, methylene chloride, or tetrachloroethylene: Chlorinated paraffins, Hypalon®, oxybisphenoxarsine/1,3-diisocyanate (OBPA®), polycarbonate, polysulfide rubber, and symmetrical tetrachloropyridiene.

Chlorine production means a process that uses carbon tetrachloride as a diluent for nitrogen trichloride or as a scrubbing liquid to recover chlorine from the liquefaction of tail gas.

Closed-loop system means an enclosed system that returns process fluid to the process and is not vented to the atmosphere except through a closed-vent system.

Closed-vent system means a system that is not open to the atmosphere and that is composed of piping, connections and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back into the process.

Connector means flanged, screwed, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, glass, or glass-lined as described in § 63.174(h).

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[22] The EPA will propose subpart A in the future.

[1] The EPA will propose subpart A in the future.

Control device means an enclosed combustion device, vapor recovery system (including devices used for temporary recovery and ultimate disposal, such as carbon adsorption), or flare.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, product accumulator vessel, and instrumentation system in volatile hazardous air pollutant service; and any control devices or systems required by this Subpart.

First attempt at repair means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere.

In food/medical service means that a piece of equipment in volatile hazardous air pollutant service contacts a process stream used to manufacture a Food and Drug Administration regulated product where leakage of a barrier fluid into the process stream would cause any of the following:

(1) A dilution of product quality so that the product would not meet written specifications,

(2) An exothermic reaction which is a safety hazard,

(3) The intended reaction to be slowed down or stopped, or

(4) An undesired side reaction to occur.

In gas/vapor service means that a piece of equipment in volatile hazardous air pollutant service contains a gas or vapor at operating conditions.

In heavy liquid service means that a piece of equipment in volatile hazardous air pollutant service is not in gas/vapor service or in light liquid service.

In light liquid service means that a piece of equipment in volatile hazardous air pollutant service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the volatile hazardous air pollutants is greater than 0.3 kilopascals at 20 °C,

(2) The total concentration of the pure volatile hazardous air pollutant constituents having a vapor pressure greater than 0.3 kilopascals at 20 °C is equal to or greater than 20 percent by weight of the total process stream, and

(3) The fluid is a liquid at operating conditions.

Note: Vapor pressures may be determined by the methods described in 40 CFR 60.485(e)(1) of this chapter.

In liquid service means that a piece of equipment in volatile hazardous air pollutant service is not in gas/vapor service.

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow, etc.). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 0.5 inches and smaller, and connectors nominally 0.75 inches and smaller in diameter are considered instrumentation systems for the purposes of this subpart. Valves greater than nominally 0.5 inches and connectors greater than nominally 0.75 inches associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

In vacuum service means that equipment is operating at an internal pressure which is at least 5 kilopascals below ambient pressure.

In volatile hazardous air pollutant or *(VHAP) service* means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of a VHAP as determined according to the provisions of § 63.180(d). The provisions of § 63.180(d) also specify how to determine that a piece of equipment is not in VHAP service.

In volatile organic compound or *(VOC) service* means, for the purposes of this subpart, that:

(1) The piece of equipment contains or contacts a process fluid that is at least 10 percent VOC by weight (see 40 CFR 60.2 of this chapter for the definition of VOC, and 40 CFR 60.485(d) of this chapter to determine whether a piece of equipment is not in VOC service); and

(2) The piece of equipment is not in heavy liquid service as defined in 40 CFR 60.481 of this chapter.

In-situ sampling systems means nonextractive samplers or in-line samplers.

Liquids dripping means any visible leakage from the seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquid dripping include puddling or new stains that are indicative of an existing evaporated drip.

Miscellaneous butadiene use means a process that produces one or more of the following butadiene products: tetrahydrophtalic anhydride (THPA), methylmethacrylatebutadiene styrene (MBS) resins, Captan®, Captafol®, 1,4-hexadiene, adiponitrile, dodecanedionic acid, butadienefurfural cotrimer, methylmethacrylate acrylonitrilebutadiene styrene (MABS) resins, and ethylidene norbornene.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process unit shutdown.

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

Pesticide production means a process that uses one or more of the following chemicals as a reactant or a processing aid in the synthesis of a pesticide intermediate or product: Carbon tetrachloride, ethylene dichloride, and methylene chloride.

Petroleum means the crude oil or natural gas liquids removed from the earth and oils derived from tar sands, shale, and coal.

Petroleum refining process unit means a process unit that for the purpose of producing transportation fuels (such as gasoline and diesel fuels), heating oils (such as distillate and residual fuel oils), or lubricants; separates petroleum; or separates, cracks, or reforms unfinished petroleum derivatives. Examples of such units include, but are not limited to, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, and thermal processes.

Pharmaceutical production means a process that synthesizes pharmaceutical intermediate or final products using carbon tetrachloride or methylene chloride as a reactant or process solvent.

Plant site means a contiguous or adjoining area under the control of a single owner or operator that contains one or more process units to which these standards apply. Plant site does not include those units to which these standards do not apply.

Polybutadiene production means a process that produces polybutadiene through the polymerization of 1,3-butadiene.

Polymerizing monomer means a molecule or compound usually containing carbon and of relatively low molecular weight and simple structure (e.g., hydrogen cyanide, acrylonitrile, styrene), which is capable of conversion to polymers, synthetic resins, or elastomers by combination with itself due to heat generation caused by a pump mechanical seal surface, contamination by a seal fluid (e.g., organic peroxides or chemicals that will form organic peroxides), or a combination of both with the resultant polymer buildup causing rapid mechanical seal failure.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

Process unit means equipment that uses or produces a VHAP or its derivatives as intermediates or final products, and is listed in § 63.160 (b) and (c). For the purpose of this regulation, process unit includes all equipment associated with the unit process operation (e.g., reactors, distillation, etc.), storage and transfer of feed material to the unit process operation and final or intermediate product from the unit process operation, and operations treating wastewater from the unit process operation.

Process unit shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a process unit or part of a process unit consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the process unit or part of the process unit of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown, is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

Product accumulator vessel means any distillate receiver, bottoms receiver, surge control vessel, or product separator in VHAP service that is vented to the atmosphere either directly without first going through a pressure relief device or through a vacuum producing system. A product accumulator vessel is in VHAP service if the liquid or the vapor in the vessel is at least 5 percent by weight VHAP.

Repaired means that equipment is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of this Subpart.

Screwed connector means a threaded pipe fitting where the threads are cut on the pipe wall and the fitting requires only two pieces to make the connection (i.e., the pipe and the fitting).

Semiannual means a 6-month period; the first semiannual period concludes on the last day of the last month during the 180 calendar days following initial startup for new sources; and the first semiannual period concludes on the last day of the last month during the 180 calendar days after the effective date of a specific subpart that references this Subpart for existing sources unless an earlier month is designated by the owner or operator.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Set pressure means the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

Startup means the setting in operation of a process unit or control device.

Styrene-butadiene rubber production means a process that produces styrene-butadiene copolymers, whether in solid (elastomer) or emulsion (latex) form.

Volatile hazardous air pollutant or *VHAP* means a substance listed in § 63.183.

§ 63.162 Standards: General.

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of §§ 63.162 through 63.174 for each new and existing source as required in 40 CFR 61.05 of this chapter, except as provided in §§ 63.175 through 63.179.

(b) Compliance with this subpart will be determined by review of records, review of performance test results, and inspection using the methods and procedures specified in § 63.180.

(c)(1) An owner or operator may request a determination of alternative means of emission limitation to the requirements of §§ 63.163 and 63.164, §§ 63.166 through 63.170, and §§ 63.172 through 63.174 as provided in § 63.177.

(2) If the Administrator makes a determination that a means of emission limitation is a permissible alternative to the requirements of §§ 63.163 and 63.164, §§ 63.166 through 63.170, and §§ 63.172, 63.173, or 63.174, the owner or operator shall comply with the alternative.

(d) Each piece of equipment in a process unit to which this subpart applies shall be identified such that it can be distinguished readily from equipment that is not subject to this subpart. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, or by designation of process unit boundaries by some form of weatherproof identification.

(e) Equipment that is in vacuum service is excluded from the requirements of §§ 63.163 through 63.174 if it is identified as required in § 63.181(b)(5).

(f) Equipment that is in VHAP service less than 300 hours per calendar year is excluded from the requirements of §§ 63.163 through 63.174 and § 63.178 if it is identified as required in § 63.181(b)(7).

(g) The provisions for existing process units apply to process units that commenced construction or reconstruction before December 31, 1992. The provisions for new process units apply to units the construction or reconstruction of which commences on or after December 31, 1992.

§ 63.163 Standards: Pumps in light liquid service.

(a) The provisions of this section apply to each pump that is in light liquid service.

(1) The provisions are implemented on the specified applicability dates designated in § 63.160(b) for existing and new process units in the phases specified below:

(i) For each group of existing process units, the phases of the standard are:

(A) Phase I, beginning on the applicability date;

(B) Phase II, beginning 1 year after the applicability date; and

(C) Phase III, beginning 2½ years after the applicability date.

(ii) For new process units, the applicable phases of the standard are:

(A) After initial startup, comply with the Phase II requirements; and

(B) Beginning 1 year after startup, comply with the Phase III requirements.

(2) The owner or operator of an affected process unit may elect to meet the requirements of a later phase during the time period specified for an earlier phase.

(b)(1) The owner or operator of an affected process unit shall monitor each pump monthly to detect leaks by the method specified in § 63.180(b) and shall comply with the requirements of paragraphs (a) through (d) of this section, except as provided in § 63.162(c) and paragraphs (e) through (h) of this section.

(2) The instrument reading, as determined by the method as specified in § 63.180(b), that defines a leak in each phase of the standard is:

(i) For Phase I, an instrument reading of 10,000 parts per million or greater.

(ii) For Phase II, an instrument reading of 5,000 parts per million or greater.

(iii) For Phase III, an instrument reading of:

(A) 5,000 parts per million or greater for pumps handling polymerizing monomers;

(B) 2,000 parts per million or greater for pumps in food/medical service; and

(C) 1,000 parts per million or greater for all other pumps.

(3) Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (c)(3) of this section or § 63.171.

(2) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempts at repair include, but are not limited to, the following practices where practicable:

(i) Tightening of packing gland nuts.

(ii) Ensuring that the seal flush is operating at design pressure and temperature.

(3) For pumps in Phase III to which a 1,000 parts per million leak definition applies, repair is not required unless an instrument reading of 2,000 parts per million or greater is detected.

(d)(1) The owner or operator shall decide no later than the first monitoring period whether to calculate percent leaking pumps on a process unit basis or on a plant site basis. Once the owner or operator has decided, all subsequent percent calculations shall be made on the same basis.

(2) If, in Phase III, calculated on a 6-month rolling average, the greater of either 10 percent of the pumps in a process unit (or plant site) or three pumps in a process unit (or plant site) leak, the owner or operator shall implement a quality improvement program for pumps that complies with the requirements of § 63.176.

(3) The number of pumps at a process unit (or plant site) shall be the sum of all the pumps in VHAP service, except that pumps found leaking in a continuous process unit within 1 month after startup shall not count in the percent leaking pumps calculation for that one monitoring period only.

(4) Percent leaking pumps shall be determined by the following equation:

$\%P_L=((P_L-P_S)/(P_T-P_S))\times 100$

where:

$\%P_L$=Percent leaking pumps

P_L=Number of pumps found leaking as determined through monthly monitoring as required in paragraphs (b)(1) and (2) of this section.

P_T=Total pumps in VHAP service, including those meeting the criteria in paragraphs (e) and (f) of this section.

P_S=Number of pumps leaking within 1 month of startup during the current monitoring period.

(e) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the following requirements are met:

(1) Each dual mechanical seal system is:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of § 63.172; or

(iii) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(2) The barrier fluid is not in light liquid VHAP service.

(3) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(i) If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the pump shall be monitored as specified in § 63.180(b) to determine the presence of VHAP in the barrier fluid.

(ii) If an instrument reading of 1,000 parts per million or greater is measured, a leak is detected.

(5) Each sensor as described in paragraph (e)(3) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(6)(i) The owner or operetor determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both.

(ii) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (e)(6)(i) of this section, or if, based on the criteria established in paragraph (e) not in old draft (6)(i) of this section, the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(iii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 63.171.

(iv) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(f) Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from paragraphs (b) (1) and (2) of this section.

(g) Any pump equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 63.172 is exempt from the requirements of paragraphs (b) through (e).

(h) Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(3) and (e)(4) of this section, and the daily requirements of paragraph (e)(5) of this section, provided that each pump is visually inspected as often as practicable and at least monthly.

§ 63.164 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to atmosphere, except as provided in § 63.162(c) and paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure; or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of § 63.172; or

(3) Equipped with a closed-loop system that purges the barrier fluid directly into a process stream.

(c) The barrier fluid shall not be in light liquid service.

(d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in paragraph (d) of this section shall be observed daily or shall be equipped with an alarm unless the compressor is located within the boundary of an unmanned plant site.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 63.171.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of § 63.172, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in § 63.181(b)(2), to operate as indicated by an instrument reading of less than 500 parts per million above background, is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:

(1) Is demonstrated to be operating with an instrument reading of less than 500 parts per million above background, as measured by the method specified in § 63.180(c); and

(2) Is tested for compliance with paragraph (i)(1) of this section initially upon designation, annually, and at other times requested by the Administrator.

§ 63.165 Standards: Pressure relief devices in gas/vapor service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with an instrument reading of less than 500 parts per million above background except as provided in paragraph (b) of this section, as measured by the method specified in § 63.180(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition indicated by an instrument reading of less than 500 parts per million above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 63.171.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition indicated by an instrument reading of less than 500 parts per million above background, as measured by the method specified in § 63.180(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 63.172 is exempt from the requirements of paragraphs (a) and (b) of this section.

§ 63.166 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system, except as provided in § 63.162(c).

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall:

(1) Return the purged process fluid directly to the process line; or

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that complies with the requirements of § 63.172.

(c) *In-situ* sampling systems are exempt from the requirements of paragraphs (a) and (b) of this section.

§ 63.167 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 63.162(c).

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance or repair.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

§ 63.168 Standards: Valves in gas/vapor service and in light liquid service.

(a) The provisions of this section apply to valves that are either in gas service or in light liquid service.

(1) The provisions are implemented on the specified applicability dates set forth in § 63.160(b) for existing and new process units in the phases specified below:

(i) For each group of existing process units, the phases of the standard are:

(A) Phase I, beginning on the applicability date;

(B) Phase II, beginning 1 year after the applicability date; and

(C) Phase III, beginning 2½ years after the applicability date.

(ii) For new process units, the applicable phases of the standard are:

(A) After initial startup, comply with the Phase II requirements; and

(B) Beginning 1 year after startup, comply with the Phase III requirements.

(2) The owner or operator of an affected process unit may elect to meet the requirements of a later phase during the time period specified for an earlier phase.

(b) The owner or operator of an affected process unit shall monitor all valves, except as provided in § 63.162 (c), (h), and (i) of this section, at the intervals specified in paragraphs (c) and (d) of this section and shall comply with all other provisions of this section, except as provided in § 63.171, § 63.177, § 63.178, and § 63.179.

(1) The valves shall be monitored to detect leaks by the method specified in § 63.180(b).

(2) The instrument reading that defines a leak in each phase of the standard is:

(i) For Phase I, an instrument reading of 10,000 parts per million or greater.

(ii) For Phase II, an instrument reading of 500 parts per million or greater.

(iii) For Phase III, an instrument reading of 500 parts per million or greater.

(c) In Phases I and II, each valve shall be monitored quarterly.

(d) In Phase III, the owner or operator shall monitor valves for leaks at the intervals specified below:

(1) At process units with 2 percent or greater leaking valves, calculated as a rolling average of 2 consecutive periods, the owner or operator shall either:

(i) Monitor each valve once per month; or

(ii) Within the first year after the onset of Phase III, implement a quality improvement program for valves that complies with the requirements of § 63.175 and monitor quarterly.

(2) At process units with less than 2 percent leaking valves, the owner or operator shall monitor each valve once each quarter, except as provided in the following paragraphs (d) (3) and (4) of this section.

(3) At process units with less than 1 percent leaking valves, the owner or

operator may elect to monitor each valve once every 2 quarters.

(4) At process units with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every 4 quarters.

(e)(1) Percent leaking valves at a process unit shall be determined by the following equation:

$$\%V_L = ((V_L/(V_T + V_C)) \times 100$$

where:

$\%V_L$ = Percent leaking valves.
V_L = Number of valves found leaking excluding nonrepairables as provided in paragraph (e)(3)(i) of this section.
V_T = Total valves monitored.
V_C = Optional credit for removed valves = 0.67 × net number (i.e., total removed-total added) of valves in VHAP service removed from process unit after the applicability date set forth in § 63.160(b) for existing process units, and after the date of startup for new process units. If credits are not taken, then $V_C = 0$.

(2) For use in determining monitoring frequency, as specified in paragraph (d) of this section, the percent leaking valves shall be calculated as a rolling average of two consecutive monitoring periods for monthly, quarterly, or semiannual monitoring programs; and as an average of any three out of four consecutive monitoring periods for annual monitoring programs.

(3)(i) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to comply with paragraph (e)(3)(ii) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking calculation in a previous period) up to a maximum of 1 percent of the total number of valves in VHAP service at a process unit may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(ii) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in VHAP service at a process unit, the number of nonrepairable valves exceeding 1 percent of the total number of valves in VHAP service shall be included in the calculation of percent leaking valves.

(f)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 63.171.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(3) When a leak is repaired, the valve shall be monitored at least once within the first 3 months after its repair.

(g) First attempts at repair include, but are not limited to, the following practices where practicable:

(1) Tightening of bonnet bolts,

(2) Replacement of bonnet bolts,

(3) Tightening of packing gland nuts, and

(4) Injection of lubricant into lubricated packing.

(h) Any valve that is designated, as described in § 63.181(i)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraphs (b) through (d) of this section if:

(1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (b) through (d) of this section; and

(2) The owner or operator of the valve has a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(i) Any valve that is designated, as described in § 63.181(i)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraphs (b) through (d) of this section if:

(1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface;

(2) The process unit within which the valve is located is an existing process unit; and

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

(j) Any equipment located at a plant site with fewer than 250 valves in VHAP service is exempt from the requirements of paragraph (d)(1) of this section. Except as provided in paragraphs (h) and (i) of this section, the owner or operator shall monitor each valve in VHAP service for leaks once each quarter, or comply with paragraphs (d)(3) or (d)(4) of this section.

§ 63.169 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service.

(a) Pumps, valves, connectors, and agitators in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 63.180(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method, except as provided in § 63.162(c). If a potential leak in an instrumentation system is repaired as required in paragraphs (c) and (d) of this section, it is not necessary to monitor the system for leaks by the method specified in § 63.180(b).

(b) If an instrument reading of 10,000 parts per million or greater for agitators, 1,000 parts per million or greater for pumps, or 500 parts per million or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 63.171.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(3) For instrumentation systems that are not monitored by the method specified in § 63.180(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

(d) First attempts at repair include, but are not limited to, the best practices described under § 63.168(g).

§ 63.170 Standards: Product accumulator vessels.

Each product accumulator vessel shall be equipped with a closed-vent system capable of capturing and transporting any leakage from the vessel to a control device as described in § 63.172, except as provided in § 63.162(c).

§ 63.171 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown. Repair of this equipment shall occur by the end of the next process unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in VHAP service.

(c) Delay of repair for valves, connectors, and agitators is also allowed if:

(1) The owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair, and

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with § 63.172.

(d) Delay of repair for pumps is also allowed if:

(1) Repair requires replacing a single mechanical seal system with:

(i) A dual mechanical seal system that meets the requirements of § 63.163(e),

(ii) a pump that meets the requirements of § 63.163(f), or

(iii) a closed-vent system control device that meets the requirements of § 63.163(g); and

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a process unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next process unit shutdown will not be allowed unless the next process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

§ 63.172 Standards: Closed-vent systems and control devices.

(a) Owners or operators of closed-vent systems and control devices used to comply with provisions of this Subpart shall comply with the provisions of this section, except as provided in § 63.162(c).

(b) Vapor recovery systems (e.g., condensers and adsorbers) shall be designed and operated to recover the organic emissions vented to them with an efficiency of 95 percent or greater.

(c) Enclosed combustion devices shall be designed and operated to reduce the organic emissions vented to them with an efficiency of 95 percent or greater or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C.

(d) Flares used to comply with this Subpart shall comply with the requirements of 40 CFR 60.18 of this chapter.

(e) Owners or operators of control devices that are used to comply with the provisions of this Subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their design.

(f)(1) Closed-vent systems shall be designed for and operated with an instrument reading of less than 500 parts per million above background and by visual inspections, as determined by the methods specified as § 63.180(c).

(2) Closed-vent systems shall be monitored to determine compliance with this section initially in accordance with 40 CFR 61.05 of this chapter, annually, and at other times requested by the Administrator, except equipment components on closed vent systems meeting the descriptions in § 63.168(h) and § 63.174(f) through (h) shall meet the requirements of those sections.

(3) Leaks, as indicated by an instrument reading greater than 500 parts per million above background and visual inspections, shall be repaired as soon as practicable, but not later than 15 calendar days after the leak is detected.

(4) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(g) Whenever VHAP emissions are vented to a closed-vent system or control device used to comply with the provisions of this subpart, such system or control device shall be operating.

§ 63.173 Standards: Agitators in gas/vapor service and in light liquid service.

(a)(1) Each agitator shall be monitored monthly to detect leaks by the methods specified in § 63.180(b), except as provided in § 63.162(c).

(2) Each agitator shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator.

(b)(1) If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the agitator, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 63.171.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) Any agitator equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 63.172 is exempt from the requirements of paragraphs (a) through (c).

§ 63.174 Standards: Connectors in gas/vapor service and in light liquid service.

(a) The owner or operator of an affected process unit shall monitor all connectors in gas/vapor and light liquid service, except as provided in § 63.162(c), and (f) through (h) of this section, at the intervals specified in paragraph (b) of this section.

(1) The connectors shall be monitored to detect leaks by the method specified in § 63.180(b).

(2) If an instrument reading greater than or equal to 500 parts per million is measured, a leak is detected.

(b) The owner or operator shall monitor for leaks at the intervals specified below.

(1) Within the first 12 months after the specified applicability dates described in § 63.160(b) for each group of existing process units, the owner or operator shall monitor all connectors, except as provided in paragraphs (f) through (h) of this section.

(2) Within the first 12 months after the beginning of startup or within 12 months after (insert date of promulgation in **Federal Register**), whichever is later, for new process units, the owner or operator shall monitor all connectors, except as provided in paragraphs (f) through (h) of this section.

(3) After conducting the initial survey required in paragraph (b)(1) of this section, the owner or operator shall perform all subsequent monitoring of connectors at the following frequencies, except as provided in paragraph (c)(2) of this section:

(i) Once per calendar year, if the percent leaking connectors in the process unit was 0.5 percent or greater during the last required annual or biennial monitoring period.

(ii) Once every 2 calendar years, if the percent leaking connectors was less than 0.5 percent during the last required monitoring period. An owner or operator may comply with this paragraph by monitoring at least 40 percent of the connectors in the first year and the remainder of the connectors in the second year. The percent leaking connectors will be calculated for the total of all monitoring performed during the 2-year period.

(iii) If the owner or operator of a process unit in a biennial leak detection and repair program calculates less than 0.5 percent leaking connectors from the 2-year monitoring period, the owner or operator may monitor the connectors one time every 4 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 20 percent of the connectors each year until all connectors have been monitored within 4 years.

(iv) If a process unit complying with the requirements of paragraph (b) of this section using a 4-year monitoring interval program has greater than or equal to 0.5 percent but less than 1 percent leaking connectors, the owner or operator shall increase the monitoring frequency to one time every 2 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40 percent of the connectors in the first year and the remainder of the connectors in the second year. The owner or operator may again elect to use the provisions of paragraph (b)(3)(iii) of this section when the percent leaking connectors decreases to less than 0.5 percent.

(v) If a process unit complying with requirements of paragraph (b) of this section using a 4-year monitoring interval program has 1 percent or greater leaking connectors, the owner or operator shall increase the monitoring frequency to one time per year. The owner or operator may again elect to use the provisions of paragraph (b)(3)(iii) of this section when the percent leaking connectors decreases to less than 0.5 percent.

(4) After December 31, 1992, if an owner or operator eliminates a connector subject to monitoring under paragraph (b) of this section either by welding it completely around the circumference of the interface or by physically removing the connector and welding the pipe together, the owner or operator shall check the integrity of the weld by monitoring it according to the procedures in § 63.180(b) or by testing using X-ray, acoustic monitoring, hydrotesting, or other applicable method. Welds created after December 31, 1992, but before (insert date of publication of promulgation in **Federal Register**) shall be monitored or tested by (insert date 3 months after promulgation in **Federal Register**); welds created after (insert date of publication of promulgation in **Federal Register**) shall be monitored or tested within 3 months after being welded. If an inadequate weld is found or the connector is not welded completely around the circumference, the connector is not considered a welded connector as described in § 63.161, and is therefore not exempt from the provisions of this Subpart. Connectors welded on or after December 31, 1992, can count as connectors removed from the process and be eligible for removed connector credits as described in paragraph (i) of this section.

(c)(1)(i) Except as provided in paragraph (c)(1)(ii) of this section, each connector that has been opened or has otherwise had the seal broken shall be monitored for leaks within the first 3 months after being returned to VHAP service, including those determined to be nonrepairable prior to process unit shutdown. If the follow-up monitoring detects a leak, it shall be repaired according to the provisions of paragraph (d) of this section, unless it is determined to be nonrepairable, in which case it is counted as a nonrepairable for the purposes of paragraph (i)(2) of this section.

(ii) As an alternative to the requirements in paragraph (c)(1)(i) of this section, an owner or operator may choose to calculate percent leaking connectors for the monitoring periods described in paragraph (b) of this section, by setting the nonrepairable component, C_{AN}, in the equation in paragraph (i)(2) of this section to zero for all monitoring periods.

(iii) An owner or operator may switch alternatives described in paragraphs (c)(1) (i) and (ii) of this section at the end of the current monitoring period he is in, provided that he notify the Administrator as required in § 63.182(b)(7) and begin the new alternative in annual monitoring. The initial monitoring in the new alternative shall be completed no later than 12 months after notification of the Administrator of the switch.

(2) As an alternative to the requirements of paragraph (b)(3) of this section, each screwed connector 5.08 centimeters or less installed in a process unit before December 31, 1992, may:

(i) Comply with the requirements of § 63.169, and

(ii) Be monitored for leaks within the first 3 months after being returned to VHAP service after having been opened or otherwise had the seal broken. If the follow-up monitoring detects a leak, it shall be repaired according to the provisions of paragraph (d) of this section.

(d) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in paragraph (g) of this section and in § 63.171. A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(e) If a leak is detected, the connector shall be monitored for leaks within the first 3 months after its repair.

(f) Any connector that is designated, as described in § 63.181(i)(1), as an unsafe-to-monitor connector is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator determines that the connector is unsafe to monitor because personnel would be exposed to an immediate danger as a result of complying with paragraphs (a) through (e) of this section; and

(2) The owner or operator has a written plan that requires monitoring of the connector as frequent as practicable during safe to monitor periods.

(g) Any connector that is designated, as described in § 63.181(i)(3), as an unsafe-to-repair connector is exempt from the requirements of paragraphs (a), (d), and (e) of this section if:

(1) The owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with paragraph (d) of this section; and

(2) The connector will be repaired before the end of the next scheduled process unit shutdown.

(h)(1) Any connector that is inaccessible or is glass or glass-lined, is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping and reporting requirements of § 63.181 and § 63.182. An inaccessible connector is one that is:

(i) Buried;

(ii) Insulated in a manner that prevents access to the connector by a monitor probe;

(iii) Obstructed by equipment or piping that prevents access to the connector by a monitor probe; or

(iv) Unable to be reached from a 7.6-meter (25-foot) portable scaffold on the ground, and is greater than 2 meters above a support surface.

(2) If any inaccessible or glass or glass-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 63.171 and paragraph (g) of this section.

(3) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(i) For use in determining the monitoring frequency, as specified in paragraph (b) of this section, the percent leaking connectors shall be calculated as follows:

(1) For the first monitoring period, use the following equation:

$\%C_L = C_L/(C_t + C_C) \times 100$

where:

$\% C_L$=Percent leaking connectors.
C_L=Number of connectors measured at 500 parts per million or greater, by the method specified in § 63.180(b).
C_t=Total number of monitored connectors in the process unit.
C_C=Optional credit for removed connectors=0.67×net (i.e., total removed—total added) number of connectors in VHAP service removed from the process unit after the applicability date set forth in § 63.160(b) for existing process units, and after the date of startup for new process units. If credits are not taken, then C_C=0.

(2) For subsequent monitoring periods, use the following equation:

$\%C_L = [(C_L - C_{AN})/(C_t + C_C)] \times 100$

where:

$\% C_L$=Percent leaking connectors.
C_L=Number of connectors, including nonrepairables, measured at 500 parts per million or greater, by the method specified in § 63.180(b).

C_{AN}=Number of allowable nonrepairable connectors, as determined by monitoring required in paragraphs (b)(3) and (c) of this section, not to exceed 2 percent of the total connector population, C_t.

C_t=Total number of monitored connectors, including nonrepairables, in the process unit.

C_C=Optional credit for removed connectors=0.67×net number (i.e., total removed—total added) of connectors in VHAP service removed from the process unit after the applicability date set forth in § 63.160(b) for existing process units, and after the date of startup for new process units. If credits are not taken, then C_C=0.

§ 63.175 Quality improvement program for valves.

(a) In Phase III, to comply with the requirements in § 63.168(d)(1)(ii), an owner or operator may elect to comply with one of the alternative quality improvement programs specified in paragraphs (d) and (e) of this section. The decision to use one of these alternative provisions to comply with the requirements of § 63.168(d)(1)(ii) must be made during the first year of Phase III for existing process units and for new process units.

(b) An owner or operator of a process unit subject to the requirements of paragraph (d) or (e) of this section shall comply with those requirements until the process unit has fewer than 2 percent leaking valves, calculated as a rolling average of 2 consecutive quarters, as specified in § 63.168(e).

(c) After the process unit has fewer than 2 percent leaking valves, the owner or operator may elect to comply with the requirements in § 63.168, to continue to comply with the requirements in paragraph (e) [or (d), if appropriate] of this section, or both. If the owner or operator elects to continue the quality improvement program, the owner or operator is exempt from the requirements for performance trials as specified in paragraph (e)(6) of this section, or further progress as specified in paragraph (d)(4) of this section, as long as the process unit has fewer than 2 percent leaking valves. If the owner or operator elects to comply with both paragraph (e) of this section and § 63.168, he may also take advantage of the lower monitoring frequencies associated with lower leak rates in § 63.168. If the owner or operator elects not to continue the quality improvement program, the program is no longer an option if the process unit again exceeds 2 percent leaking valves, and in such case, monthly monitoring will be required.

(d) The following requirements shall be met if an owner or operator elects to use a quality improvement program to demonstrate further progress:

(1) The owner or operator shall continue to comply with the requirements in § 63.168 except each valve shall be monitored quarterly.

(2) The owner or operator shall collect the following data, and maintain records as required in § 63.181(m), for each valve in each process unit subject to the quality improvement program:

(i) The maximum instrument reading observed in each monitoring observation before repair, the response factor for the stream if appropriate, the instrument model number, and date of the observation.

(ii) Whether the valve is in gas or light liquid service.

(iii) If a leak is detected, the repair methods used and the instrument readings after repair.

(3) The owner or operator shall continue to collect data on the valves as long as the process unit remains in the quality improvement program.

(4) The owner or operator must demonstrate progress in reducing the percent leaking valves each quarter the process unit is subject to the requirements of paragraph (d) of this section, except as provided in paragraph (d)(4)(ii) of this section.

(i) Demonstration of progress shall mean that for each quarter there is at least a 10-percent reduction in the percent leaking valves from the percent leaking valves determined for the preceding monitoring period. The percent leaking valves shall be calculated as a rolling average of two consecutive quarters of monitoring data. The percent reduction shall be calculated using the rolling average percent leaking valves, according to the following:

$$\%LV_R=(\%LV_{AVG1}-\%LV_{AVG2})/\%LV_{AVG1}\times 100$$

where:

$\%LV_R$=Percent leaking valve reduction.
$\%LV_{AVG1}=(\%V_{Li}+\%V_{Li+1})/2$.
$\%LV_{AVG2}=(\%V_{Li+1}+\%V_{Li+2})/2$.

where:

$\%V_{Li}$, $\%V_{Li+1}$, $\%V_{Li+2}$ are percent leaking valves calculated for subsequent monitoring periods, i, i+1, i+2.

(ii) An owner or operator who fails for two consecutive rolling averages to demonstrate at least a 10-percent reduction per quarter in percent leaking valves, or that the overall average percent reduction based on two or more rolling averages is less than 10 percent per quarter, shall either comply with the requirements in § 63.168(d)(1) using monthly monitoring or shall comply using a quality improvement program for technology review as specified in paragraph (e) of this section. If the owner or operator elects to comply with the requirements of paragraph (e) of this section, the schedule for performance trials and valve replacements remains as specified in paragraph (e) of this section.

(e) The following requirements shall be met if an owner or operator elects to use a quality improvement program of technology review and improvement:

(1) The owner or operator shall comply with the requirements in § 63.168 except the requirement for monthly monitoring in paragraph § 63.168(d)(1)(i) does not apply.

(2) The owner or operator shall collect the data specified below, and maintain records as required in § 63.181(m), for each valve in each process unit subject to the quality improvement program. The data may be collected and the records may be maintained on a process unit or group of process units basis.

(i) The data shall include the following:

(A) Valve type (e.g., ball, gate, check); valve manufacturer; valve design (e.g., external stem or actuating mechanism, flanged body); materials of construction; packing material; and year installed.

(B) Service characteristics of the stream such as operating pressure, temperature, line diameter, and corrosivity.

(C) Whether the valve is in gas or light liquid service.

(D) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if adjusted, instrument model number, and date of the observation.

(E) If a leak is detected, the repair methods used and the instrument readings after repair.

(F) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units, a description of any maintenance or quality assurance programs used in the process unit that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the valves as long as the process unit remains in the quality improvement program.

(4) The owner or operator shall inspect all valves removed from the process unit due to leaks. The inspection shall determine which parts of the valve have failed and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5)(i) The owner or operator shall analyze the data collected to comply with the requirements of paragraph (e)(2) of this section to determine the services, operating or maintenance practices, and valve designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process specific factors.

(ii) The analysis shall also be used to identify any superior performing valve technologies that are applicable to the service(s), operating conditions, or valve designs associated with poorer than average emission performance. A superior performing valve technology is one for which a group of such valves has a leak frequency of less than 2 percent for specific applications in such a process unit. A candidate superior performing valve technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 2 percent leaking valves in the process unit.

(iii) The analysis shall include consideration of:

(A) The data obtained from the inspections of valves removed from the process unit due to leaks,

(B) Information from the available literature and from the experience of other plant sites that will identify valve designs or technologies and operating conditions associated with low emission performance for specific services, and

(C) Information on limitations on the service conditions for the valve design and operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an inter- or intra-company program (or through some combination of the two approaches) and may be for a single process unit, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of Phase III. The first analysis shall be performed using a minimum of two quarters of data. An analysis of the data shall be done each year the process unit is in the quality improvement program.

(6) A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify superior performing valve designs or technologies that can be applied to the operating conditions and services identified as having poorer than average performance, except as provided in paragraph (e)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit the valve designs or technologies that have been identified by others as having low emission performance.

(i) The trial program shall include on-line trials of valves or operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 2 percent in similar services, as having low probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing valve technologies is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in § 63.181(m)(6)(ii).

(ii) The number of valves in the trial evaluation program shall be the lesser of 1 percent or 20 valves for programs involving single process units and the lesser of 1 percent or 50 valves for programs involving groups of process units.

(iii) The trial evaluation program shall specify and include documentation of:

(A) The candidate superior performing valve designs or technologies to be evaluated, the stages for evaluating the identified candidate valve designs or technologies, including the estimated time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated; and

(D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial valves.

(iv) The performance trials shall initially be conducted for, at least, a 6-month period beginning not later than 18 months after the start of Phase III. Not later than 24 months after the start of Phase III, the owner or operator shall have identified valve designs or technologies that, combined with appropriate process, operating, and maintenance practices, operate with low emission performance for specific applications in the process unit. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified, except as provided in paragraph (e)(6)(vi) of this section. The compilation of candidate and demonstrated superior emission performance valve designs or technologies shall be amended in the future, as appropriate, as additional information and experience is obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 total employees shall be exempt from trial evaluations of valves. Plant sites exempt from the trial evaluations of valves shall begin the valve replacement program at the start of the fourth year of Phase III.

(vi) An owner or operator who has conducted performance trials on all candidate superior emission performance technologies suitable for the required applications in the process unit may stop conducting performance trials provided that a superior performing design or technology has been demonstrated or there are no technically feasible candidate superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgment that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) Each owner or operator who elects to use a quality improvement program for technology review and improvement shall prepare and implement a valve quality assurance program that details purchasing specifications and maintenance procedures for all valves in the process unit. The quality assurance program may establish any number of categories, or classes, of valves as needed to distinguish among operating conditions and services associated with poorer than average emission performance as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (e)(5) of this section, if applicable, the findings of the trial evaluation required in paragraph (e)(6) of this section, and the operating conditions in the process unit. The quality assurance program shall be reviewed and, as appropriate, updated each year as long as the process unit has 2 percent or more leaking valves.

(i) The quality assurance program shall:

(A) Establish minimum design standards for each category of valves. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the valve;

(C) Include a written procedure for bench testing of valves that specifies performance criteria for acceptance of valves and specifies criteria for the precision and accuracy of the test apparatus. All valves repaired off-line after preparation of the quality assurance plan shall be benchtested for leaks. This testing may be conducted by the owner or operator of the process unit, by the vendor, or by a designated representative. The owner or operator shall install only those valves that have been documented through bench testing to be nonleaking.

(D) Require that all valves repaired on-line be tested using the method specified in § 63.180(b) for leaks for 2 successive months, after repair.

(E) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator of the process unit or by a designated representative.

(F) Detail off-line valve maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished valves will meet the design specifications for the valve type and will operate such that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of Phase III for plant sites with 400 or more valves or owned by a corporation with 100 or more employees; and no later than the start of the fourth year of Phase III for plant sites with less than 400 valves and owned by a corporation with less than 100 employees.

(8) Beginning at the start of the third year of Phase III for plant sites with 400 or more valves or owned by a corporation with 100 or more employees and at the start of the fourth year of Phase III for plant sites with less than 400 valves and owned by a corporation with less than 100 employees, each valve that is replaced for any reason shall be replaced with a new or modified valve that complies with the quality assurance standards for the valve category and that is identified as superior emission performance technology. Superior emission performance technology means valves or valve technologies identified with emission performance that, combined with appropriate process, operating, and maintenance practices, will result in less than 2 percent leaking valves for specific applications in a large population, except as provided in paragraph (e)(8)(ii) of this section.

(i) The valves shall be maintained as specified in the quality assurance program.

(ii) If a superior emission performance technology cannot be identified, then valve replacement shall be with one of (if several) the lowest emission performance technologies that has been identified for the specific application.

§ 63.176 Quality improvement program for pumps.

(a) In Phase III, if, on a 6-month rolling average, the greater of either 10 percent of the pumps in a process unit (or plant site) or three pumps in a process unit (or plant site) leak, the owner or operator shall comply with the requirements of this section as specified below:

(1) Pumps that are in food/medical service or in polymerizing monomer service shall comply with all requirements except for those specified in paragraph (d)(8) of this section.

(2) Pumps that are not in food/medical or polymerizing monomer service shall comply with all requirements of this section.

(b) The owner or operator shall comply with the requirements of this section until the number of leaking pumps is less than the greater of either 10 percent of the pumps or three pumps, calculated as a 6-month rolling average, in the process unit (or plant site). Once the performance level is achieved, the owner or operator shall comply with the requirements in § 63.163.

(c) If in a subsequent monitoring period, the process unit (or plant site) has greater than 10 percent of the pumps leaking or three pumps leaking (calculated as a 6-month rolling average), the owner or operator shall resume the quality improvement program starting at performance trials.

(d) The quality improvement program shall include the following:

(1) The owner or operator shall comply with the requirements in § 63.163.

(2) The owner or operator shall collect the following data, and maintain records as required in § 63.181(m), for each pump in each process unit (or plant site) subject to the quality improvement program. The data may be collected and the records may be maintained on a process unit or plant site basis.

(i) Pump type (e.g., piston, horizontal or vertical centrifugal, gear, bellows); pump manufacturer; seal type and manufacturer; pump design (e.g., external shaft, flanged body); materials of construction; if applicable, barrier fluid or packing material; and year installed.

(ii) Service characteristics of the stream such as discharge pressure, temperature, flow rate, corrosivity, and annual operating hours.

(iii) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if appropriate, instrument model number, and date of the observation.

(iv) If a leak is detected, the repair methods used and the instrument readings after repair.

(v) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units, a description of any maintenance or quality assurance programs used in the process unit that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the pumps as long as the process unit (or plant site) remains in the quality improvement program.

(4) The owner or operator shall inspect all pumps or pump seals which exhibited frequent seal failures and were removed from the process unit due to leaks. The inspection shall determine the probable cause of the pump seal failure or of the pump leak and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5)(i) The owner or operator shall analyze the data collected to comply with the requirements of paragraph (d)(2) of this section to determine the services, operating or maintenance practices, and pump or pump seal designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process specific factors.

(ii) The analysis shall also be used to determine if there are superior performing pump or pump seal technologies that are applicable to the service(s), operating conditions, or pump or pump seal designs associated with poorer than average emission performance. A superior performing pump or pump seal technology is one with a leak frequency of less than 10 percent for specific applications in the process unit or plant site. A candidate superior performing pump or pump seal technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 10 percent leaking pumps in the process unit (or plant site).

(iii) The analysis shall include consideration of:

(A) The data obtained from the inspections of pumps and pump seals removed from the process unit due to leaks;

(B) Information from the available literature and from the experience of other plant sites that will identify pump designs or technologies and operating conditions associated with low emission performance for specific services; and

(C) Information on limitations on the service conditions for the pump seal technology operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an inter- or intra-company program (or through some combination of the two approaches) and may be for a single process unit, a plant site, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of the quality improvement program. The first analysis shall be performed using a minimum of 6 months of data. An analysis of the data shall be done each year the process unit is in the quality improvement program.

(6) A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify use of superior performing pump seal technology or pumps that can be applied to the areas identified as having poorer than average performance, except as provided in paragraph (d)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit (or plant site) the pump designs or seal technologies, and operating and maintenance practices that have been identified by others as having low emission performance.

(i) The trial program shall include on-line trials of pump seal technologies or pump designs and operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 10 percent in similar services, as having low probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing pump seal technologies or pumps is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in § 63.181(m)(6)(ii).

(ii) The number of pump seal technologies or pumps in the trial evaluation program shall be the lesser of 1 percent or two pumps for programs involving single process units and the lesser of 1 percent or five pumps for programs involving a plant site or groups of process units. The minimum number of pumps or pump seal technologies in a trial program shall be one.

(iii) The trial evaluation program shall specify and include documentation of:

(A) The candidate superior performing pump seal designs or technologies to be evaluated, the stages for evaluating the identified candidate pump designs or pump seal technologies, including the time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated; and

(D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial pump seal technologies or pumps.

(iv) The performance trials shall initially be conducted, at least, for a 6-month period beginning not later than 18 months after the start of the quality improvement program. No later than 24 months after the start of the quality improvement program, the owner or operator shall have identified pump seal technologies or pump designs that, combined with appropriate process, operating, and maintenance practices, operate with low emission performance for specific applications in the process unit. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified, except as provided in paragraph (d)(6)(vi) of this section. The initial list of superior emission performance pump designs or pump seal technologies shall be amended in the future, as appropriate, as additional information and experience is obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 employees shall be exempt from trial evaluations of pump seals or pump designs. Plant sites exempt from the trial evaluations of pumps shall begin the pump seal or pump replacement program at the start of the fourth year of the quality improvement program.

(vi) An owner or operator who has conducted performance trials on all alternative superior emission performance technologies suitable for the required applications in the process unit may stop conducting performance trials provided that a superior performing design or technology has been demonstrated or there are no technically feasible alternative superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgment that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) Each owner or operator shall prepare and implement a pump quality assurance program that details purchasing specifications and maintenance procedures for all pumps and pump seals in the process unit. The quality assurance program may establish any number of categories, or classes, of pumps as needed to distinguish among operating conditions and services associated with poorer than average emission performance as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (d)(5) of this section, if applicable, the findings of the trial evaluation required in paragraph (d)(6) of this section, and the operating conditions in the process unit. The quality assurance program shall be updated each year as long as the process unit has the greater of either 10 percent or more leaking pumps or has three leaking pumps.

(i) The quality assurance program shall:

(A) Establish minimum design standards for each category of pumps or pump seal technology. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the pump or the pump seal;

(C) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator of the plant site or process unit or by a designated representative; and

(D) Detail off-line pump maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished pumps and pump seals will meet the design specifications for the pump category and will operate such that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees; and no later than the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees.

(8) Beginning at the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees and at the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees, the owner or operator shall replace, as described in paragraphs (d)(8) (i) and (ii) of this section, the pumps or pump seals that are not superior emission performance technology with pumps or pump seals that have been identified as superior emission performance technology and that comply with the quality assurance standards for the pump category. Superior emission performance technology is that category or design of pumps or pump seals with emission performance which, when combined with appropriate process, operating, and maintenance practices, will result in less than 10 percent leaking pumps for specific applications in the process unit or plant site. Superior emission performance technology includes material or design changes to the existing pump, pump seal, seal support system, installation of multiple mechanical seals or equivalent, or pump replacement.

(i) Pumps or pump seals shall be replaced at the rate of 20 percent per year based on the total number of pumps in light liquid service. The calculated value shall be rounded to the nearest nonzero integer value. The minimum number of pumps or pump seals shall be one. Pump replacement shall continue until all pumps subject to the requirements of § 63.163 are pumps determined to be superior performance technology.

(ii) The owner or operator may delay replacement of pump seals or pumps with superior technology until the next planned process unit shutdown, provided the number of pump seals and pumps replaced is equivalent to the 20 percent or greater annual replacement rate.

(iii) The pumps shall be maintained as specified in the quality assurance program.

§ 63.177 Alternative means of emission limitation: General.

(a) Permission to use an alternative means of emission limitation under section 112(e)(3) of the Clean Air Act shall be governed by the following procedures:

(b) Where the standard is an equipment, design, or operational requirement:

(1) Each owner or operator applying for permission shall be responsible for collecting and verifying emission performance test data for an alternative means of emission limitation.

(2) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(3) The Administrator may condition the permission on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the equipment, design, and operational requirements.

(c) Where the standard is a work practice:

(1) Each owner or operator applying for permission shall be responsible for collecting and verifying test data for an alternative means of emission limitation.

(2) For each source for which permission is requested, the emission reduction achieved by the required work practices shall be demonstrated for a minimum period of 12 months.

(3) For each source for which permission is requested, the emission reduction achieved by the alternative means of emission limitation shall be demonstrated.

(4) Each owner or operator applying for permission shall commit, in writing, for each source to work practices that provide for emission reductions equal to or greater than the emission reductions achieved by the required work practices.

(5) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (c)(4) of this section.

(6) The Administrator may condition the permission on requirements that may be necessary to assure operation and maintenance to achieve the same or greater emission reduction as the required work practices of this subpart.

(d) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(e)(1) Manufacturers of equipment used to control equipment leaks of a VHAP may apply to the Administrator for permission for an alternative means of emission limitation that achieves a reduction in emissions of the VHAP achieved by the equipment, design, and operational requirements of this Subpart.

(2) The Administrator will grant permission according to the provisions of paragraphs (b), (c), and (d) of this section.

§ 63.178 Alternative means of emission limitation: Batch processes.

(a) As an alternative to complying with the requirements of §§ 63.163 through 63.171, §§ 63.173 and 63.174, and §§ 63.175 and 63.176, an owner or operator of a batch process that operates in VHAP service during the calendar year may comply with one of the standards specified in paragraphs (b) and (c) of this section, or the owner or operator may petition for approval of an alternative standard under the provisions of § 63.177. The alternative standards of this section provide the options of pressure testing or monitoring the equipment for leaks.

(b) The following requirements shall be met if an owner or operator elects to use pressure testing of batch product-process equipment to demonstrate compliance with this subpart. An owner or operator who complies with the provisions of this paragraph is exempt from the monitoring provisions of § 63.163, §§ 63.168 and 63.169, § 63.171, §§ 63.173 through 63.176 of this subpart.

(1) Each time equipment is reconfigured for production of a product or intermediate, the batch product-process equipment train shall be pressure-tested for leaks before VHAP is first fed to the equipment and the equipment is placed in VHAP service. When the seal is broken between two items of equipment or when equipment is changed in a section of the batch product-process equipment train, pressure testing is required only for the new or disturbed equipment. Each batch product process that operates in VHAP service during a calendar year shall be pressure tested at least once during that calendar year.

(2) The batch product process equipment shall be tested with a gas using the procedures specified in § 63.180(f) or with a liquid using the procedures specified in § 63.180(g).

(3)(i) For pressure tests using a gas, a leak is detected if the rate of change in pressure is greater than 6.9 kilopascals (1 psig) in 1 hour or if there is visible, audible, or olfactory evidence of fluid loss.

(ii) For pressure tests using a liquid, a leak is detected if there are indications of liquids dripping or if there is other evidence of fluid loss.

(4)(i) If a leak is detected, it shall be repaired and the batch product-process equipment shall be retested before VHAP is fed to the equipment.

(ii) If a batch product-process fails the retest or the second of two consecutive pressure tests, it shall be repaired as soon as practicable, but not later than 30 calendar days after the equipment is placed in VHAP service, provided the conditions specified in paragraph (d) of this section are met.

(c) The following requirements shall be met if an owner or operator elects to monitor the equipment to detect leaks by the method specified in § 63.180(b) to demonstrate compliance with this subpart.

(1) The owner or operator shall comply with the requirements of §§ 63.163 through 63.170, and §§ 63.172 through 63.176.

(2) The equipment shall be monitored for leaks by the method specified in § 63.180(b) when the equipment is in VHAP service, in use with an acceptable surrogate volatile organic compound which is not a VHAP, or is in use with any other detectable gas or vapor.

(3) The equipment shall be monitored for leaks as specified below:

(i) Each time the equipment is reconfigured for the production of a product, the reconfigured equipment shall be monitored for leaks within 30 days of being returned to VHAP service. This initial monitoring of reconfigured equipment shall not be included in determining percent leaking equipment.

(ii) Connectors shall be monitored in accordance with the requirements in § 63.174.

(iii) Equipment other than connectors shall be monitored at the frequencies specified in the following table by the proportion of the year the batch product-process equipment train is operating with processes that use VHAP and the monitoring frequency for continuous processes.

Batch process	Equivalent continuous process monitoring frequency time in use		
	Monthly	Quarterly	Semiannually
0 to <25%	Quarterly	Annually	Annually.
25 to <50%	Quarterly	Semiannually	Annually.
50 to <75%	Bimonthly	Three times	Semiannually.
75 to 100%	Monthly	Quarterly	Semiannually.

(iv) Valves may be monitored once per year and pumps and agitators may be monitored once per quarter if the time each individual item of equipment is in VHAP service is less than 2,190 hours in a calendar year.

(v) The monitoring frequencies specified in paragraph (c)(3)(iii) of this section are not requirements for monitoring at specific intervals and can be adjusted to accommodate process operations. An owner or operator may monitor anytime during the specified monitoring period (e.g., month, quarter, year), provided the monitoring is conducted at a reasonable interval after completion of the last monitoring campaign. For example, if the equipment is not operating during the scheduled monitoring period, the monitoring can be done during the next period when the process is operating.

(4) If a leak is detected, it shall be repaired as soon as practicable but not later than 15 calendar days after it is detected, except as provided in paragraph (d) of this section.

(d) Delay of repair of equipment for which leaks have been detected is allowed if the replacement equipment is not available providing the following conditions are met:

(1) Equipment supplies have been depleted and supplies had been sufficiently stocked before the supplies were depleted.

(2) The repair is made no later than 10 calendar days after delivery of the replacement equipment.

§ 63.179 Alternative means of emission limitation: Enclosed-vented process units.

Process units enclosed in such a manner that all emissions from equipment leaks are vented through a closed-vent system to a control device meeting the requirements of § 63.172 are exempt from the monitoring requirements of § 63.163, §§ 63.168 and 63.169, and §§ 63.173 and 63.174. The enclosure shall be maintained under a negative pressure at all times while the process unit is in operation to ensure that all emissions are routed to a control device.

§ 63.180 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Monitoring, as required under this subpart, shall comply with the following requirements:

(1) Monitoring shall comply with Method 21.

(2) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60 of this chapter.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60 of this chapter.

(4) Calibration gases shall be:

(i) Zero air (less than 0.2 parts per million of hydrocarbon in air); and

(ii)(A) For Phase I, a mixture of methane in air at a concentration of approximately, but less than, 10,000 parts per million.

(B) For Phase II, a mixture of methane and air at a concentration of approximately, but less than, 10,000 parts per million for agitators, 5,000 parts per million for pumps, and 500 parts per million for all other equipment, except as provided in paragraph (b)(4)(iii) of this section.

(C) For Phase III, a mixture of methane and air at a concentration of approximately, but less than, 10,000 parts per million methane for agitators; 2,000 parts per million for pumps in food/medical service; 5,000 parts per million for pumps in polymerizing monomer service; 1,000 parts per million for all other pumps; and 500 parts per million for all other equipment, except as provided in paragraph (b)(4)(iii) of this section.

(iii) The instrument may be calibrated at a higher methane concentration up to 2,000 parts per million than the leak definition concentration for a specific piece of equipment for monitoring that piece of equipment. The instrument may not be calibrated at a lower methane concentration than the leak definition concentration for a specific piece of equipment.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(6) The instrument response factors shall be considered in the following manner:

(i) The response factors used shall be the instrument response factor determined for the individual VHAP at 500 parts per million. The response factors may be obtained from the available literature, the instrument manufacturer, or determined for the specific instrument and VHAP.

(ii) Chemical composition of individual process streams may be determined by sampling, engineering calculations, or process knowledge. A separate determination for each stream is not necessary if all or portions of the process unit can be shown to exhibit similar composition. The basis for all process stream composition determinations shall be documented as required in § 63.181(b)(11).

(iii) If the response factors at 500 parts per million for the VHAP's that account for 90 percent or more by weight of the process stream are all less than 3, the instrument readings may be used without adjustment for response factors.

(iv) If any of the response factors at 500 parts per million for the VHAP's that account for 90 percent or more by weight of the process stream is 3 or greater, then a weighted average response factor for the VHAP in the process stream shall be calculated using the procedures specified in paragraph (b)(6)(v) of this section. If the process stream weighted average response factor is less than 3, the instrument readings may be used without adjustment for response factors. If the process stream weighted average response factor is greater than 3, the instrument readings shall be adjusted for response factors as indicated below:

(A) Adjust the instrument readings by multiplying by the response factor;

(B) Select another instrument, determine or obtain instrument response factors for the VHAP in question, and evaluate the need for adjustment as specified in paragraphs (b)(6)(iii) and (b)(6)(iv) of this section; or

(C) Calibrate the instrument with a different reference compound or mixture (i.e., one of the VHAP, a VOC other than methane, or the process stream mixture) so that the instrument has a response factor for 90 percent of the VHAP or for the process stream less than 3.

(v) The process stream average response factor shall be calculated as follows:

$$RF_{avg} = \left[\sum_{i=1}^{n} (\%C_i)(RF_{Ci}) \right]^{-1}$$

where:

RF_{avg}=Weighted average response factor.

$\%C_i$=Molar fraction, or volume percent if in gaseous form, of organic compound i in the process stream.

RF_{Ci}=Response factor of the instrument for organic compound i at 500 parts per million.

(c) When equipment is tested for compliance as required in §§ 63.164(i) and 63.165, and § 63.172(f), the test shall comply with the following requirements:

(1) The requirements of paragraphs (b)(1) through (4) of this section shall apply.

(2) The background level shall be determined, as set forth in Method 21 of 40 CFR part 60 of this chapter.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of 40 CFR part 60 of this chapter.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 parts per million for determining compliance.

(d)(1) Each piece of equipment within a process unit that can reasonably be expected to contain equipment in VHAP service is presumed to be in VHAP service unless an owner or operator demonstrates that the piece of equipment is not in VHAP service. For a piece of equipment to be considered not in VHAP service, it must be determined that the percent VHAP content can be reasonably expected not to exceed 5 percen by weight during the calendar year. For purposes of determining the percent VHAP content of the process fluid that is contained in or contacts equipment, Method 18 shall be used.

(2)(i) An owner or operator may use good engineering judgment rather than the procedures in paragraph (d)(1) of this section to determine that the percent VHAP content does not exceed 5 percent by weight. When an owner or operator and the Administrator do not agree on whether a piece of equipment is not in VHAP service, however, the procedures in paragraph (d)(1) of this section shall be used to resolve the disagreement.

(ii) Conversely, the owner or operator may determine that the VHAP content of the process fluid does not exceed 5 percent by weight by, for example, accounting for 98 percent of the content and showing that VHAP is less than 3 percent.

(3) If an owner or operator determines that a piece of equipment is in VHAP service, the determination can be revised after following the procedures in paragraph (d)(1) of this section, or by documenting that a change in the process or raw materials no longer causes the equipment to be in VHAP service.

(4) Samples used in determining the percent VHAP content shall be representative of the process fluid that is contained in or contacts the equipment.

(e) Reference methods used in determining compliance with flares are those required in § 60.18 of this chapter.

(f) The following procedures shall be used to pressure test batch product-process equipment using a gas (e.g., air or nitrogen) to demonstrate compliance with the requirements of § 63.178(b)(3)(i).

(1) The batch product-process equipment train shall be pressurized with a gas to the operating pressure of the equipment. The equipment shall not be tested at a pressure greater than the pressure setting of the lowest relief valve setting.

(2) Once the test pressure is obtained, the gas source shall be shut off.

(3) The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop was exceeded. The pressure in the batch product-process equipment shall be measured after the gas source is shut off and at the end of the test period. The rate of change in pressure in the batch product-process equipment shall be calculated using the following equation:

$$\Delta \frac{P}{t} = \frac{(P_f - P_i)}{(t_f - t_i)}$$

where:

$\frac{\blacktriangle P}{t}$ =Change in pressure, psig/hr.

P_f=Final pressure, psig.

P_i=Initial pressure, psig.

t_f-t_i=Elapsed time, hours.

(4) The pressure shall be measured using a pressure measurement device (gauge, manometer, or equivalent) which has a precision of ±2.5 millimeter mercury in the range of test pressure and is capable of measuring pressures up to the relief set pressure of the pressure relief device.

(g) The following procedures shall be used to pressure-test batch product-process equipment using a liquid to demonstrate compliance with the requirements of § 63.178(b)(3)(ii).

(1) The batch product-process equipment train, or section of the train, shall be filled with the test liquid (e.g., water, alcohol). Once the equipment is filled, the liquid source shall be shut off.

(2) The test shall be conducted for a period of at least 60 minutes, unless it can be determined in a shorter period of time that the test is a failure.

(3) Each seal in the equipment being tested shall be inspected for indications of liquid dripping or other indications of fluid loss. If there are any indications of liquids dripping or of fluid loss, a leak is detected. (Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)).

§ 63.181 Recordkeeping requirements.

(a) An owner or operator of more than one process unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these process units in one recordkeeping system if the system identifies each record by process unit and the program being implemented (e.g., quarterly monitoring, quality improvement) for each type of equipment. All records and information required by this section shall be maintained in a manner that can be readily accessed at the plant site. This could include physically locating the records at the plant site or accessing the records from a central location by computer at the plant site.

(b) Except as provided in paragraphs (f) and (g) of this section, the following information pertaining to all equipment in each process unit subject to the requirements in §§ 63.162 through 63.174 shall be recorded:

(1)(i) A list of identification numbers for equipment (except connectors exempt from monitoring and recordkeeping identified in § 63.174 and instrumentation systems) subject to the requirements of this Subpart and a site layout showing the relative location of the equipment in the process unit. Connectors need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this Subpart are identified as a group, and the number of connectors subject is indicated.

(ii) A table listing the monitoring frequency and other provisions of this Subpart that are being implemented for each item of equipment.

(iii) Physical tagging of the equipment to indicate that it is in VHAP service is not required. Equipment subject to the provisions of this Subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(2)(i) A list of identification numbers for compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 parts per million above background, under the provisions of § 63.164(i).

(ii) The designation of this equipment as subject to the requirements of § 63.164(i) shall be signed by the owner or operator.

(3) A list of equipment identification numbers for pressure relief devices required to comply with § 63.165(a).

(4)(i) The dates and results of each compliance test required in §§ 63.164(i) and 63.165.

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at each piece of equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(6) Instrumentation system identification. Individual components in the instrumentation system need not be identified.

(7) A list of identification numbers for equipment in VHAP service less than 300 hours per year within a process unit subject to the provisions of this subpart under § 63.160.

(8)(i) Identification, either by list, location (area or grouping), or tagging of connectors disturbed since the last monitoring period required in § 63.174(b), as described in § 63.174(c).

(ii) The date and results of follow-up monitoring as required in § 63.174(c). If identification of disturbed connectors is made by location, then all connectors within the designated location shall be monitored.

(9) A list of reconfigured equipment in batch product process units since the last monitoring period required in § 63.178(c)(3)(ii) through (iv), as described in § 63.178(c)(3)(i).

(10) A list of valves removed from and added to the process unit, as considered in § 63.168(e)(1), and a list of connectors removed from and added to the process unit, as considered in § 63.174(i)(1). This is not required unless the net credits for removed valves and connectors are expected to be used.

(11) Documentation of process stream composition as required in § 63.180(b)(6)(ii).

(12) Identification of screwed connectors subject to the requirements of § 63.174(c)(2). Identification can be by area or grouping as long as the total number within each group or area is recorded.

(13) Identification of welded connectors monitored or tested as required in § 63.174(b)(4), the date of the weld, and the date of monitoring or testing.

(c) When each leak is detected as specified in §§ 63.163 and 63.164; §§ 63.168 and 63.169; and §§ 63.172 through 63.174, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

(2) The identification on a valve or connector may be removed after it has been monitored as specified in § 63.168(f)(3), § 63.174(e), and § 63.175(e)(7)(i)(D), and no leak has been detected during the follow-up monitoring.

(3) The identification on equipment, except on a valve or connector, may be removed after it has been repaired.

(d) When each leak is detected as specified in §§ 63.163 and 63.164; §§ 63.168 and 63.169; and §§ 63.172 through 63.174, the following information shall be recorded and kept for 2 years:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date the leak was detected and the dates of each attempt to repair the leak.

(3) Repair methods applied in each attempt to repair the leak.

(4) Maximum instrument reading measured by the method specified in § 63.180(b) after it is successfully repaired or determined to be nonrepairable.

(5) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak. If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked before depletion and the reason for depletion.

(6) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a process unit shutdown.

(7) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(8) Dates of process unit shutdowns that occur while the equipment is unrepaired.

(9) The date of successful repair of the leak.

(e) The following information shall be recorded for each process unit subject to the requirements of §§ 63.163 through 63.174:

(1) A schedule of monitoring for valves and for connectors.

(2) The number of leaking pumps, the total number of pumps, and the percent

leaking pumps during each monitoring period.

(3) The number of leaking valves, the total number of valves, all net credits for removed valves (only if credits are taken), the number of nonrepairable valves, and the percent leaking valves during each monitoring period.

(4) The number of leaking connectors, the total number of monitored connectors, all net credits for removed connectors (only if credits are taken), the number of nonrepairable connectors, and the percent leaking connectors during each monitoring period. The number of leaking screwed connectors, the total number of monitored screwed connectors, and the percent leaking screwed connectors during each monitoring period.

(5) The dates and durations of:

(i) startups and shutdowns of a process unit, and

(ii) any unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit that is not defined as a process unit shutdown. If the duration exceeds 24 hours, the calculations used in determining that emissions from clearing process material from the process unit or part of the process unit would exceed emissions from delay of repair of leaking components until the next scheduled shutdown shall be recorded. The calculation shall assume that the purged material is collected and destroyed or recovered in a control device complying with § 63.172.

(f) The owner or operator of a batch product process who elects to pressure test the batch product process equipment train to demonstrate compliance with this subpart is exempt from the requirements of paragraphs (b), (c), (d), (e), (i), and (m) of this section. Instead, the owner or operator shall maintain records of the following information:

(1) A list of identification numbers for each batch product process equipment train used to produce products during the calendar year and the area of the plant site where the equipment train is located.

(2) Records demonstrating the equipment is in use in a batch process during the calendar year. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit.

(3) Physical tagging of the equipment to identify that it is in VHAP service and subject to the provisions of this subpart is not required. Equipment in a batch product process subject to the provisions of this subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(4) The dates of each pressure test required in § 63.178(b), the test pressure, and the pressure drop observed during the test.

(5) Records of any visible, audible, or olfactory evidence of fluid loss.

(g) When a batch product process equipment train does not pass two consecutive pressure tests, the following information shall be recorded in a log and kept for 2 years:

(1) The date of each pressure test and the date of each leak repair attempt.

(2) Repair methods applied in each attempt to repair the leak.

(3) The reason for the delay of repair.

(4) The expected date for delivery of the replacement equipment and the actual date of delivery of the replacement equipment.

(5) The date of successful repair.

(h) The following information pertaining to the design requirements for closed-vent systems and control devices described in § 63.172 shall be recorded:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any changes in the design specifications.

(3) A description of the parameter or parameters monitored, as required in § 63.172(e), to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter (or parameters) was selected for the monitoring.

(4) Dates and durations when the closed-vent systems and control devices required in §§ 63.163 through 63.166, and § 63.170 are not operated as designed as indicated by the monitored parameters, including periods when a flare pilot light system does not have a flame.

(5) Dates and durations during which the monitoring system or monitoring device is inoperative.

(6) Dates and durations of startups and shutdowns of the closed-vent systems and control devices required in §§ 63.163 through 63.166, and § 63.170.

(i) The following information pertaining to all valves subject to the requirements of § 63.168 (h) and (i), and all connectors subject to the requirements of § 63.174 (f), (g), and (h) shall be recorded:

(1) A list of identification numbers for valves and connectors that are designated as unsafe to monitor, an explanation for each valve and connector stating why the valve or connector is unsafe to monitor, and the plan for monitoring each valve and connector.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(3) A list of identification numbers for connectors that are designated as unsafe to repair and an explanation for each connector stating why the connector is unsafe to repair.

(j) The following information shall be recorded:

(1) Design criterion required in §§ 63.163(e)(5) and 63.164(e)(2), and an explanation of the design criterion; and

(2) Any changes to this criterion and the reasons for the changes.

(k) Information, data, and analysis used to determine that a piece of equipment or process unit is in heavy liquid service or is not in VHAP service shall be recorded. Such a determination shall include an analysis or demonstration that the feed or raw materials, products, by-products, co-products, or intermediates do not include sufficient chemicals listed in § 63.183 to meet the criteria of "in VHAP service." Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(l) The date and duration of each process unit startup and shutdown shall be recorded.

(m) Each owner or operator of an affected process unit subject to the requirements of §§ 63.175 and 63.176 shall maintain the following records for the period of the quality improvement program for the affected process unit:

(1) For owners or operators who elect to use a reasonable further progress quality improvement program, as specified in § 63.175(d):

(i) All data required in § 63.175(d)(2).

(ii) The percent leaking valves observed each quarter and the rolling average percent reduction observed in each quarter.

(iii) The beginning and ending dates while meeting the requirements of § 63.175(d).

(2) For owners or operators who elect to use a technology review and improvement quality improvement program, as specified in § 63.175(e):

(i) All data required in § 63.175(e)(2).

(ii) The percent leaking valves observed each quarter.

(iii) Documentation of all inspections conducted under the requirements of § 63.175(e)(4), and any recommendations for design or specification changes to reduce leak frequency.

(iv) The beginning and ending dates while meeting the requirements of § 63.175(e).

(3) For owners or operators subject to the requirements of the pump quality improvement program as specified in § 63.176:

(i) All data required in § 63.176(d)(2).

(ii) The rolling average percent leaking pumps.

(iii) Documentation of all inspections conducted under the requirements of § 63.176(d)(4), and any recommendations for design or specification changes to reduce leak frequency.

(iv) The beginning and ending dates while meeting the requirements of § 63.176(d).

(4) If a leak is not repaired within 15 calendar days after discovery of the leak, the reason for the delay and the expected date of successful repair.

(5) Records of all analyses required in §§ 63.175(e) and 63.176(d). The records will include the following:

(i) A list identifying areas associated with poorer than average performance and the associated service characteristics of the stream, the operating conditions and maintenance practices.

(ii) The reasons for rejecting specific candidate superior emission performing valve or pump technology from performance trials.

(iii) The list of candidate superior emission performing valve or pump technologies, and documentation of the performance trial program items required under §§ 63.175(e)(6)(iii) and 63.176(d)(6)(iii).

(iv) The beginning date and duration of performance trials of each candidate superior emission performing technology.

(6) All records documenting the quality assurance program for valves or pumps as specified in §§ 63.175(e)(7) and 63.176(d)(7).

(7) Records indicating that all valves or pumps replaced or modified during the period of the quality improvement program are in compliance with the quality assurance requirements in § 63.175(e)(7) and § 63.176(d)(7).

(8) Records documenting compliance with the 20 percent or greater annual replacement rate for pumps as specified in § 63.176(d)(8).

(9) Information and data to show the corporation has fewer than 100 employees, including employees providing professional and technical contracted services.

(n) Owners and operators choosing to comply with the requirements of § 63.179 shall maintain the following records:

(1) Identification of the process unit(s) and the VHAP's they handle.

(2) A schematic of the process unit, enclosure, and closed vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

(o) The provisions of 40 CFR 61.14(f) of this chapter do not apply to process units subject to this subpart. (Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)).

(Approved by the Office of Management and Budget under Control Number _________)

§ 63.182 Reporting requirements.

(a)(1) An owner or operator of a process unit subject to the provisions of this subpart shall submit a statement in writing so notifying the Administrator.

(2) In the case of an existing process unit or a new process unit that has an initial startup date preceding the effective date, the statement is to be submitted within 90 calendar days of the applicability dates specified in § 63.160(b), unless a waiver of compliance is granted under 40 CFR 61.11 of this chapter, along with the information required under 40 CFR 61.10 of this chapter. If a waiver of compliance is granted, the statement is to be submitted on a date scheduled by the Administrator.

(3) In the case of new process units that did not have an initial startup date preceding the effective date, the statement shall be submitted with the application for approval of construction or reconstruction as described in 40 CFR 61.07 of this chapter.

(4) The statement is to contain the following information for each process unit, except as provided in paragraph (b)(5) of this section:

(i) Process unit identification.

(ii) Number of each equipment type (e.g., valves, pumps) excluding equipment in vacuum service.

(iii) Method of compliance with the standard (for example, "monthly leak detection and repair" or "equipped with dual mechanical seals").

(iv) Planned schedule for each phase of the requirements of this Subpart.

(5) The statement is to contain the following information for each process unit subject to the requirements in § 63.178(b):

(i) Batch product process equipment train identification, and

(ii) Planned schedule for pressure testing the batch product process equipment train.

(b) Except as provided in paragraph (c) of this section, a report shall be submitted to the Administrator semiannually starting 6 months after the initial report required in paragraph (a) of this section, that includes the following information, as applicable:

(1) Process unit identification, frequency of monitoring, and specific provisions of this Subpart being implemented.

(2) For each monitoring period during the semiannual reporting period:

(i) The number of valves for which leaks were detected as described in § 63.168(b), the percent leakers, and the total number of valves monitored;

(ii) The number of valves for which leaks were not repaired as required in § 63.168(f), identifying the number of those that are determined nonrepairable;

(iii) The number of pumps for which leaks were detected as described in § 63.163(b), the percent leakers, and the total number of pumps monitored;

(iv) The number of pumps for which leaks were not repaired as required in § 63.163(c);

(v) The number of compressors for which leaks were detected as described in § 63.164(f);

(vi) The number of compressors for which leaks were not repaired as required in § 63.164(g);

(vii) The number of connectors for which leaks were detected as described in § 63.174(a), the percent of connectors leaking, and the total number of connectors monitored;

(viii) The number of screwed connectors for which leaks were detected as described in § 63.174(a), the percent of screwed connectors leaking, and the total number of screwed connectors monitored;

(ix) The number of connectors for which leaks were not repaired as required in § 63.174(d), identifying the number of those that are determined nonrepairable;

(x) The number of screwed connectors for which leaks were not repaired as required in § 63.174(d);

(xi) The number of agitators for which leaks were detected as described in § 63.173(b);

(xii) The number of agitators for which leaks were not repaired as required in § 63.173(c); and

(xiii) The facts that explain any delay of repairs and, where appropriate, why a process unit shutdown was technically infeasible.

(3) Dates and durations of process unit, control device, or monitoring device startups or shutdowns which occurred within the semiannual reporting period.

(4) Revisions to items reported according to paragraph (a) of this section if changes have occurred since

the initial report or subsequent revisions to the initial report.

Note: Compliance with the requirements of 40 CFR 61.10(c) of this chapter is not required for revisions documented under this paragraph.

(5) The results of all performance tests to determine compliance with §§ 63.164(i) and 63.165(a); and § 63.172(f) conducted within the semiannual reporting period.

(6) The initiation of a monthly monitoring program under § 63.168(d)(1)(i), or a quality improvement program under either §§ 63.175 or 63.176, whichever is applicable.

(7) Notification to the Administrator of a change in connector monitoring alternatives as described in § 63.174(c)(1).

(c) For owners or operators electing to meet the requirements of § 63.178(b), a report shall be submitted to the Administrator semiannually starting 6 months after the initial report required in paragraph (a) of this section. The semiannual report shall include the following information:

(1) Batch product process equipment train identification;

(2) The number of pressure tests conducted;

(3) The number of pressure tests where the equipment train failed the pressure test;

(4) The facts that explain any delay of repairs; and

(5) The results of all performance tests to determine compliance with § 63.172(f).

(d) An application for approval of construction or reconstruction, 40 CFR 61.05(a) and 40 CFR 61.07 of this chapter, will not be required if:

(1) The new process unit complies with the applicable standards in § 63.162 or § 63.178; and

(2) In the next semiannual report required by paragraph (b) of this section, the information in paragraph (a)(4) of this section is reported.

(e) An owner or operator of a process unit required to comply with § 63.168(d)(1) shall notify the Administrator within 30 calendar days of initiating the monthly monitoring program under § 63.168(d)(1)(i) or a quality improvement program under § 63.175.

(f) An owner or operator of a process unit required to comply with § 63.163(d)(2) shall notify the Administrator within 30 calendar days of initiating a quality improvement program under § 63.176.

(g) If acceptable to both the Administrator and the owner or operator of the process unit, the reports may be submitted on electronic media.

(Approved by the Office of Management and Budget under Control Number ______)

§ 63.183 List of volatile hazardous air pollutants.

The provisions of this subpart apply to the following VHAPS:

Chemical name	CAS No.
Acetaldehyde	75070
Acetamide	60355
Acetonitrile	75058
Acetophenone	98862
2-Acetylaminofluorine	53963
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Allyl chloride	107051
4-Aminobiphenyl	92671
Aniline	62533
o-Anisidine	90040
Benzene	71432
Benzidine	92875
Benzotrichloride	98077
Benzyl chloride	100447
Biphenyl	92524
Bis(2-ethylhexyl)phthalate (DEHP)	117817
Bis(chloromethyl)ether	542881
Bromoform	75252
1,3-Butadiene	106990
Caprolactam	105602
Carbon disulfide	75150
Carbon tetrachloride	56235
Carbonyl sulfide	463581
Catechol*	120809
Chloroacetic acid	79118
2–Chloroacetophenone	532274
Chlorobenzene	108907
Chloroform	67663
Chloromethyl methyl ether	107302
Chloroprene	126998
Cresols and cresylic acids (mixed)	1319773
Cresol and cresylic acid (o-isomer)	95487
Cresol and cresylic acid (m-isomer)	108394
Cresol and cresylic acid (p-isomer)	106445
Cumene	98828
2,4-D, salts and esters	94757
DDE	3547044
Diazomethane	334883
Dibenzofurans	132649
1,2-Dibromo-3-chloropropane	96128
Dibutylphthalate	84742
1,4-Dichlorobenzene(p-)	106467
3,3'-Dichlorobenzidine	91941
Dichloroethyl ether (bis(2-chloroethyl)ether)	111444
1,3-Dichloropropene	542756
Diethanolamine	111422
N,N-Dimethylaniline	121697
Diethyl sulfate	64675
3,3'-Dimethoxybenzidine	119904
Dimethyl aminoazobenzene	60117
3,3'-Dimethylbenzidine	119937
Dimethyl carbamoyl chloride	79447
Dimethylformamide	68122
1,1-Dimethylhydrazine	57147
Dimethyl phthalate	131113
Dimethyl sulfate	77781
4,6-Dinitro-o-cresol, and salts	534521
2,4-Dinitrophenol	51285
2,4-Dinitrotoluene	121142
1,4-Dioxane (1,4-Diethyleneoxide)	123911
1,2-Diphenylhydrazine	122667
Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106898
1,2-Epoxybutane	106887
Ethyl acrylate	140885
Ethylbenzene	100414
Ethyl carbamate (Urethane)	51796
Ethyl chloride (Chloroethane)	75003
Ethylene dibromide (Dibromoethane)	106934
Ethylene dichloride (1,2-Dichloroethane)	107062
Ethylene glycol	107211
Ethylene oxide	75218
Ethylene thiourea	96457
Ethylidene dichloride (1,1-Dichloroethane)	75343
Formaldehyde	50000
Glycol ethers*	0
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachloroethane	67721
Hexamethylene-1,6-diisocyanate	822060
Hexamethylphosphoramide	680319
Hexane	110543
Hydrazine	302012
Hydroquinone	123319
Isophorone	78591
Maleic anhydride	108316
Methanol	67561
Methyl bromide (Bromomethane)	74839
Methyl chloride (Chloromethane)	74873
Methyl chloroform (1,1,1-Trichloroethane)	71556
Methyl ethyl ketone (2-Butanone)	78933
Methyl hydrazine	60344
Methyl iodide (Iodomethane)	74884
Methyl isobutyl ketone (Hexone)	108101
Methyl isocyanate	624839
Methyl methacrylate	80626
Methyl tert butyl ether	1634044
4,4-Methylene bis(2-chloroaniline)	101144
Methylene chloride (Dichloromethane)	75092
Methylene diphenyl diisocyanate (MDI)	101688
4,4'-Methylenedianiline	101779
Naphthalene	91203
Nitrobenzene	98953
4-Nitrobiphenyl	92933
4-Nitrophenol	100027
2-Nitropropane	79469
N-Nitroso-N-methylurea	684935
N-Nitrosodimethylamine	62759
N-Nitrosomorpholine	59892
Phenol	108952
p-Phenylenediamine	106503
Phosgene	75445
Phthalic anhydride	85449
Polychlorinated biphenyls (Aroclors)	1336363
1,3-Propane sultone	1120714
beta-Propiolactone	57578
Propionaldehyde	123386
Propoxur (Baygon)	114261
Propylene dichloride (1,2-Dichloropropane)	78875
Propylene oxide	75569
1,2-Propylenimine (2-Methyl aziridine)	75558
Quinone	106514
Styrene	100425
Styrene oxide	96093
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746016
1,1,2,2-trachloroethane	79345
Tetrachloroethylene (Perchloroethylene)	127184
Toluene	108883
2,4-Toluene diamine	95807
2,4-Toluene diisocyanate	584849
o-Toluidine	95534
1,2,4-Trichlorobenzene	120821
1,1,2-Trichloroethane	79005
Trichloroethylene	79016
2,4,5-Trichlorophenol	95954
2,4,6-Trichlorophenol	88062
Triethylamine	121448
Trifluralin	1582098
2,2,4-Trimethylpentane	540841
Vinyl acetate	108054
Vinyl bromide	593602
Vinyl chloride	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354
Xylenes (not otherwise specified)	1330207
Xylene (o-isomer)	95476

Chemical name	CAS No.
Xylene (m-isomer)	108383
Xylene (p-isomer)	106423

§ 63.184 List of hazardous organic chemicals production processes.

The provisions of this Subpart apply to production processes that make the following chemicals:

CAS* Number	Chemical name
Group I:	
121733	1–Chloro-3-nitrobenzene
67641	Acetone
75058	Acetonitrile
98862	Acetophenone
79061	Acrylamide
107131	Acrylonitrile
111693	Adiponitrile
107186	Allyl alcohol
123308	Aminophenol (p-isomer)
62533	Aniline
103333	Azobenzene
71432	Benzene
98486	Benzenedisulfonic acid
98113	Benzenesulfonic acid
92875	Benzidine
119619	Benzophenone
92524	Biphenyl
542881	Bis(Chloromethyl)ether
108861	Bromobenzene
110634	Butanediol (1,4-isomer)
96480	Butyrolacetone
56235	Carbon tetrachloride
532274	Chloroacetophenone (2-isomer)
95512	Chloroaniline (o-isomer)
108907	Chlorobenzene
75456	Chlorodifluoromethane
67663	Chloroform
88733	Chloronitrobenzene (o-isomer)
100005	Chloronitrobenzene (p-isomer)
80159	Cumene hydroperoxide
98828	Cumene (isopropyl benzene)
110827	Cyclohexane
108930	Cyclohexanol
108941	Cyclohexanone
110838	Cyclohexene
27134276	Dichloroaniline (mixed isomers)
106467	Dichlorobenzene (p-isomer) (PDB)
541731	Dichlorobenzene (m-isomer)
95501	Dichlorobenzene (o-isomer)
91941	Dichlorobenzidine (3,3′-isomer)
107062	Dichloroethane (1,2-isomer) (EDC)
111444	Dichloroethyl ether (bis(2-chloroethyl)ether)
75718	Dichlorodifluoromethane
111422	Diethanolamine
111466	Diethylene glycol
112732	Diethylene glycol dibutyl ether
112367	Diethylene glycol diethyl ether
111966	Diethylene glycol dimethyl ether
124174	Diethylene glycol monobutyl ether acetate
112345	Diethylene glycol monobutyl ether
112152	Diethylene glycol monoethyl ether acetate
111900	Diethylene glycol monoethyl ether
111773	Diethylene glycol monomethyl ether
77781	Dimethyl sulfate
108010	Dimethylaminoethanol (2-isomer)
25154545	Dinitrobenzenes
123911	Dioxane (1,4–Diethyleneoxide)
646060	Dioxolane (1,3-isomer)
101815	Diphenyl methane
101848	Diphenyl oxide
25265718	Dipropylene glycol
121013	Dodecylbenzene (n-isomer)
106898	Epichlorohydrin(1–Chloro-2,3-epoxypropane)
141435	Ethanolamine
100414	Ethylbenzene
96491	Ethylene carbonate
106934	Ethylene dibromide (Dibromoethane) (EDB)
107211	Ethylene glycol
111557	Ethylene glycol diacetate
629141	Ethylene glycol diethyl ether (1,2-diethoxyethane)
110714	Ethylene glycol dimethyl ether
112072	Ethylene glycol monobutyl ether acetate
111762	Ethylene glycol monobutyl ether
11159	Ethylene glycol monoethyl ether acetate
110805	Ethylene glycol monoethyl ether
110496	Ethylene glycol monomethyl ether acetate
109864	Ethylene glycol monomethyl ether
122996	Ethylene glycol monophenyl ether
2807309	Ethylene glycol monopropyl ether
75218	Ethylene oxide
50000	Formaldehyde
110178	Fumaric acid
100970	Hexamethylenetetramine
123319	Hydroquinone
	Linear alkylbenzene (no CAS number assigned)
108316	Maleic anhydride
123331	Maleic hydrazide
6915157	Malic acid
121471	Metanilic acid
63683	Methionine
75092	Methylene chloride (dichloromethane)
101779	Methylene dianiline (4,4′-isomer) (MDA)
98839	Methylstyrene (a-isomer)
88744	Nitroaniline (o-isomer)
100016	Nitroaniline (p-isomer)
98953	Nitrobenzene
111660	Octene-1
9002817	Paraformaldehyde
115775	Pentaerythritol
127184	Perchloroethylene (tetrachloroethylene)
106503	Phenylenediamine (p-isomer)
110850	Piperazine
57578	Propiolactone (beta-isomer)
79094	Propionic acid
57556	Propylene glycol
107982	Propylene glycol monomethyl ether
75569	Propylene oxide
108463	Resorcinol
100425	Styrene (Vinyl Banzene)
110156	Succinic acid
110612	Succinonitrile
526830	Tartaric acid
95943	Tetrachlorobenzene (1,2,4,5-isomer)
112607	Tetraethylene glycol
109999	Tetrahydrofuran
108883	Toluene
102821	Trichlorobenzene (1,2,4-isomer)
79016	Trichloroethylene
75694	Trichlorofluoromethane
76131	Trichlorotrifluoroethane
95954	Trichlorophenol (2,4,5-isomer)
102716	Triethanolamine
112276	Triethylene glycol
112492	Triethylene glycol dimethyl ether (glycol ether)
112356	Triethylene glycol monomethyl ether
77996	Trimethylolpropane
75014	Vinyl chloride (Chloro Ethylene)
1330207	Xylenes (not otherwise specified)
95476	Xylene (o-isomer)
106423	Xylene (p-isomer)
108383	Xylene (m-isomer)
Group II:	
75070	Acetaldehyde
107891	Acetaldol
60355	Acetamide
103844	Acetanilide
64197	Acetic acid
108247	Acetic anhydride
90040	Anisidine (o-isomer)
106990	Butadiene (1,3-isomer)
107880	Butylene glycol (1,3-isomer)
105602	Caprolactam
558134	Carbon tetrabromide
75730	Carbon tetrafluoride
75876	Chloral
79118	Chloroacetic acid
106478	Chloroaniline (p-isomer)
108430	Chlorophenol (m-isomer)
106489	Chlorophenol (p-isomer)
95578	Chlorophenol (o-isomer)
126998	Chloroprene (2–Chloro-1,3-butadiene)
75729	Chlorotrifluoromethane
4170300	Crotonaldehyde
372098	Cyanoacetic acid
29965977	Cyclooctadienes
760236	Dichloro-1-butene (3,4-isomer)
540590	Dichloroethylene (1,2-isomer)
542756	Dichloropropene (1,3-isomer)
64675	Diethyl sulfate
119937	Dimethylbenzidine (3,3′-isomer)
68122	Dimethylformamide (N,N-isomer) (DMF)
57147	Dimethylhydrazine (1,1-isomer)
120616	Dimethyl terephthalate
140885	Ethyl acrylate
105395	Ethyl chloroacetate
151564	Ethylenimine (Aziridine)
107153	Ethylenediamine
103117	Ethylhexyl acrylate (2-isomer)
75127	Formamide
64186	Formic acid
56815	Glycerol
25791962	Glycerol tri(polyoxypropylene)ether
56406	Glycine
107222	Glyoxal
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
67721	Hexachloroethane
592450	Hexadiene (1,4-isomer)
107313	Methyl formate
98851	Methyl phenol carbinol
99092	m-Nitroaniline
79469	Nitropropane (2-isomer)
123637	Paraldehyde
79210	Peracetic acid
108996	Picoline (b-isomer)
110861	Pyridine
126330	Sulfolane
100210	Terephthalic acid
79345	Tetrachloroethane (1,1,2,2-isomer)
85438	Tetrahydrophthalic anhydride
110601	Tetramethylenediamine
95807	Toluene 2,4 diamine
584849	Toluene 2,4 diisocyanate
26471625	Toluene diisocyanates (mixture)
95534	Toluidine (o-isomer)
71556	Trichloroethane (1,1,1-isomer)
79005	Trichloroethane (1,1,2-isomer) (Vinyl trichloride)
108054	Vinyl acetate
100403	Vinylcyclohexene (4-isomer)
75354	Vinylidene chloride (1,1–Dichloroethylene)
Group III:	
102012	Acetoacetanilide
142041	Aniline hydrochloride
84651	Anthraquinone
100527	Benzaldehyde
134816	Benzil
76937	Benzilic acid
65850	Benzoic acid
119539	Benzoin
100470	Benzonitrile
98077	Benzotrichloride
98884	Benzoyl chloride
140114	Benzyl acetate
100516	Benzyl alcohol
120514	Benzyl benzoate
100447	Benzyl chloride
98873	Benzyl dichloride
80057	Bisphenol A

CAS[*] Number	Chemical name
85687	Butylbenzyl phthalate
108418	Chlorotoluene (m-isomer)
95498	Chlorotoluene (o-isomer)
106434	Chlorotoluene (p-isomer)
108394	Cresol and cresylic acid (m-isomer)
1319773	Cresols and cresylic acids (mixed)
95487	Cresol and cresylic acid (o-isomer)
106445	Cresol and cresylic acid (p-isomer)
108918	Cyclohexylamine
120832	Dichlorophenol (2,4-isomer)
91667	Diethyaniline (N,N-isomer)
84662	Diethyl phthalate
26761400	Diisodecyl phthalate
131113	Dimethyl phthalate
121697	Dimethylaniline—N,N
51285	Dinitrophenol (2,4-isomer)
121142	Dinitrotoluene (2,4-isomer) (DNT)
97392	Di-o-tolyguanidine
102089	Diphenyl thiourea
122394	Diphenylamine
27193868	Dodecylphenol
103695	Ethylaniline (n-isomer)
578541	Ethylaniline (o-isomer)
121915	Isophthalic acid
25168063	Isopropylphenol
100618	Methylaniline (n-isomer)
108872	Methylcyclohexane
1331222	Methylcyclohexanone
101688	Methylene diphenyl diisocyanate (4,4′-isomer) (MDI)
91236	Nitroanisole (o-isomer)
100174	Nitroanisole (p-isomer)
100027	Nitrophenol (4-isomer)
88755	Nitrophenol (o-isomer) (2–Nitrophenol)
1321126	Nitrotoluene (all isomers)
88722	Nitrotoluene (2-isomer)
99081	Nitrotoluene (3-isomer)
99990	Nitrotoluene (4-isomer)
27193288	Octylphenol
87865	Pentachlorophenol
156434	Phenetidine (p-isomer)
108952	Phenol
77098	Phenolphthalein
1333397	Phenolsulfonic acids (all isomers)
91407	Phenyl anthranilic acid
108736	Phloroglucinol
88993	Phthalic acid
85449	Phthalic anhydride
85416	Phthalimide
91156	Phthalonitrile
98511	p-tert-Butyl toluene
106514	Quinone
69727	Salicylic acid
139026	Sodium phenate
588590	Stilbene
121573	Sulfanilic acid
632791	Tetrabromophthalic anhydride
117088	Tetrachlorophthalic anhydride
104154	Toluenesulfonic acids (all isomers)
98599	Toluenesulfonyl chloride
634935	Trichloroaniline (2,4,6-isomer)
25013154	Vinyl toluene
25321419	Xylene sulfonic acid
1300738	Xylidine
Group IV:	
107028	Acrolein
79107	Acrylic acid
107051	Allyl chloride
109751	Allyl cyanide
27497514	Bromonaphthalene
75150	Carbon disulfide
25586430	Chloronaphthalene
91178	Decahydronaphthalene
131179	Diallyl phthalate
109897	Diethylamine
115106	Dimethyl ether
124403	Dimethylamine
75003	Ethyl chloride (Chloroethane)
111308	Glutaraldehyde
106694	Hexanetriol (1,2,6-isomer)
78591	Isophorone
67561	Methanol
79209	Methyl acetate
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
60344	Methyl hydrazine
108112	Methyl isobutyl carbinol
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
74931	Methyl mercaptan
80626	Methyl methacrylate
74895	Methylamine
91203	Naphthalene
85472	Naphthalene sulfonic acid (a-isomer)
120183	Naphthalene sulfonic acid (b-isomer)
90153	Naphthol (a-isomer)
135193	Naphthol (b-isomer)
86577	Nitronaphthalene (1-isomer)
594423	Perchloromethyl mercaptan
75445	Phosgene
123386	Propionaldehyde
78875	Propylene dichloride (1,2–Dichloropropane)
124414	Sodium methoxide
78002	Tetraethyl lead
119642	Tetrahydronapthalene (Tetralin)
121448	Triethylamine
75503	Trimethylamine
933482	Trimethylcyclohexanol
2408379	Trimethylcyclohexanone
Group V:	
83329	Acenaphthene
105577	Acetal
75865	Acetone cyanohydrin
72480	Alizarin
008	Alkyl anthraquinones
	Alkyl naphthalenes (no CAS number assigned)
0010	Aminophenol sulfonic acid
120127	Anthracene
75252	Bromoform
141322	Butyl acrylate (n-isomer)
63252	Carbaryl
86748	Carbazole
25497294	Chlorodifluoroethane
218019	Chrysene
0012	Diacetoxy-2–Butene (1,4-isomer)
137097	Diaminophenol hydrochloride
74953	Dibromomethane
117839	Dibutoxyethyl phthalate
579668	Diethylaniline (2,6-isomer)
27554263	Diisooctyl phthalate
28675174	Dodecylaniline
123013	Dodecyl benzene (branched)
0013	Dodecyl phenol (branched)
75047	Ethylamine
9004573	Ethylcellulose
105566	Ethylcyanoacetate
60004	Ethylenediamene tetracetic acid
367475	Glyceraldehyde
0016	Hydroxyadipaldehyde
111422	Iminodiethanol (2,2-)
106638	Isobutyl acrylate
115117	Isobutylene
0017	Isophorone nitrile
0018	Lead phthalate
141797	Mesityl oxide
79414	Methacrylic acid
96333	Methyl acrylate
78933	Methyl ethyl ketone (2-Butanone)
1634044	Methyl tert-butyl ether
25639423	Methylcyclohexanol
79696	Methylionones (a-)
77758	Methylpentynol
567180	Naphtholsulfonic acid (1-)
84866	Naphthylamine sulfonic acid (1,4-)
81163	Naphthylamine sulfonic acid (2,1-)
134327	Naphthylamine (1-)
91598	Naphthylamine (2-)
25168041	Nitroxylene
1081772	Nonylbenzene (branched)
25154523	Nonylphenol
85018	Phenanthrene
25322683	Polyethylene glycol
25322694	Polypropylene glycol
108327	Propylene carbonate
129000	Pyrene
88120	n-Vinyl-2-pyrrolidine
27138574	Resorcylic acid (Dihydroxybenzoic acid)
112572	Tetraethylenepentamine
75741	Tetramethyl lead
110189	Tetramethylethylenediamine
102089	Thiocarbanilide
	Triethylene glycol monethly ether
007	Trimethylcyclohexylamine
540841	Trimethylpentane (2,2,4-isomer)
24800440	Tripropylene glycol
140896	Xanthates
1300716	Xylenol
526750	Xylenol (2,3-isomer)
105679	Xylenol (2,4-isomer)
95874	Xylenol (2,5-isomer)
576261	Xylenol (2,6-isomer)
95658	Xylenol (3,4-isomer)
108689	Xylenol (3,5-isomer)

[*] CAS=Chemical Abstract Service.

§ 63.185 [Reserved]

§ 63.186 [Reserved]

§ 63.187 [Reserved]

§ 63.188 [Reserved]

§ 63.189 [Reserved]

Subpart I—[Reserved]

Subpart J—[Reserved]

Subpart K—[Reserved]

3. It is proposed that appendix A of part 63 be amended by adding Methods 304 and 305 to read as follows:

Appendix A to Part 63—Test Methods

Method 304—Method for the Determination of Biodegradation Rates of Organic Compounds

1. Applicability and Principle

1.1 Applicability. This method is applicable for the determination of biodegradation rates of organic compounds in an activated sludge process. The test method is designed to evaluate the ability of an aerobic biological reaction system to degrade or destroy specific components in waste streams. The method may also be used to determine the effects of changes in wastewater composition on operation. The biodegradation rates determined by utilizing this method are not representative of a full-scale system. Full-scale systems embody biodegradation and air emissions in competing reactions. This method measures biodegradation in absence of air emissions. The rates measured by this method shall be used in conjunction with a mathematical model (cited in the applicable regulation) in order to calculate fraction emitted to the air versus fraction biodegraded.

1.2 Principle. A self-contained benchtop bioreactor system is assembled in the laboratory. A sample of mixed liquor is added and the waste stream is then fed continuously. The bioreactor is operated under conditions identical to the target full-scale activated sludge process, except that air emissions are not a factor. Bioreactor temperature, dissolved oxygen concentration, average residence time in the reactor, waste composition, biomass concentration, and biomass composition of the full-scale process are the parameters which are duplicated in the laboratory system. If antifoaming agents are used in the full-scale system, they shall also be used in the bioreactor. The feed flowing into the reactor and the effluent exiting the reactor are analyzed to determine the biodegradation rates of the target compounds. The choice of analytical methodology for measuring the compounds of interest at the inlet and outlet to the reactor are left to the discretion of the source, except where validated methods are available.

2. Apparatus

Figure 1 illustrates the typical laboratory apparatus used to measure biodegradation rates. Throughout the testing period, insure that the bioreactor system is self-contained and isolated from the atmosphere by leak-checking fittings, tubing, etc.

2.1 Laboratory Apparatus.

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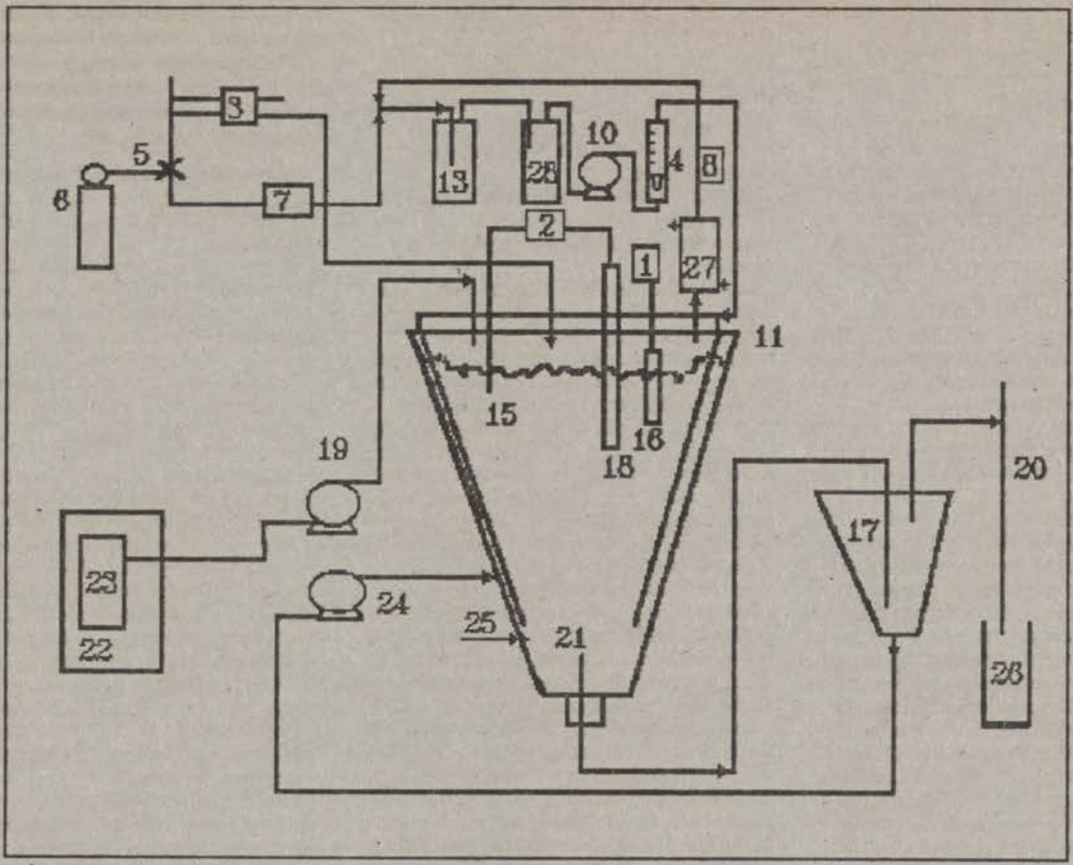

Figure 1. Flow Diagram for Laboratory Biodegradation Apparatus.

1. Dissolved Oxygen Meter
2. Digital Temperature Indicator/Controller
3. Vacuum Gauge/Control
4. Rotameter
5. Solenoid Valve, normally closed
6. Oxygen Cylinder and Regulator
7. Digital Mass Flowmeter
8. Septum Port
9. Gas Exhaust Line
10. Gas Blower
11. Viton O-ring Seal
12. Reactor Closure
13. Caustic Scrubber
15. Temperature Probe
16. Dissolved Oxygen Probe
17. Clarifier
18. Immersion Heater
19. Influent Pump
20. Effluent Drain Vent Line
21. Reactor Effluent Line
22. Ice Chest
23. Wastewater Feed Reservoir
24. Sludge Recycle Pump
25. Air Diffusers (3)
26. Effluent Collection Bottle (not used for VO sampling)
27. Water-cooled Condenser
28. Knockout Trap

BILLING CODE 6560-50-C

2.1.1 Reactor. The biological reaction is conducted in a conical 6–L glass biological oxidation reactor. The reactor is sealed and equipped with internal probes to control and monitor dissolved oxygen and internal temperature. A pair of matched flanges (blind and slip-on) are machined from ¾-in. plexiglass. Four bolts that pass through bolt holes in the blind flange are permanently tapped into the slip-on flange. Wing nuts are used to compress a Viton O-ring. The blind flange is tapped for aerators, gas flow ports, and instrumentation.

2.1.2 Aeration Gas. Aeration gas is added to the reactor through three diffusers, which are glass tubes (4 mm O.D.) that extend to the bottom fifth of the reactor depth. Aeration gas is provided by pure oxygen from a pressurized oxygen cylinder and by recycling the reactor headspace gas. Install a blower to blow the aeration gas into the reactor diffusers (Diaphragm Type, 15 SCFH capacity). Measure the aeration gas flow rate with a rotameter (0–15 SCFH). The aeration gas will rise through the reactor, dissolving oxygen into the mixture in the process. The aeration gas must provide sufficient agitation to keep the solids in suspension. Provide an exit for the aeration gas from the top flange of the reactor through a water-cooled Allihn-type condenser. The condenser is installed through a gas-tight fitting in the reactor closure. Design the system so that at least 10 percent of the gas flows through an alkaline scrubber containing 175 mL of 45 percent by weight solution of potassium hydroxide (KOH) and 5 drops of 0.2 percent alizarin yellow dye. Route the balance of the gas through an adjustable scrubber bypass. Route all of the gas through a 1–L knock-out flask to remove entrained moisture and then to the intake of the blower. The blower recirculates the gas to the reactor.

2.1.3 Wastewater Feed. Supply the wastewater feed to the reactor in a 20–L collapsible low-density polyethylene container equipped with a spigot cap (collapsible containers of other material may be required due to the permeability of some volatile compounds through polyethylene). Obtain the wastewater feed by sampling the wastewater feed in the target process. A representative sample of wastewater shall be obtained from the piping leading to the aeration tank. This sample may be obtained from existing sampling valves at the discharge of the wastewater feed pump, or collected from a pipe discharging to the aeration tank, or by pumping from a well-mixed equalization tank upstream from the aeration tank. Alternatively, wastewater can be pumped continuously to the laboratory apparatus from a bleed stream taken from the equalization tank of the full-scale treatment system.

2.1.3.1 Refrigeration System. Keep the wastewater feed cool by ice or by refrigeration to 4 °C. If using a bleed stream from the process, refrigeration is not required if the residence time in the bleed stream is less than five minutes.

2.1.3.2 Wastewater Feed Pump. The wastewater is pumped from the refrigerated container using a variable-speed peristaltic pump drive equipped with a peristaltic pump head. Add the feed solution to the reactor through a fitting on the top flange. Determine the rate of feed addition to provide a retention time in the bioreactor that is numerically equivalent to the retention time in the fullscale system. The wastewater shall be fed at a rate sufficient to achieve 90 to 100 percent of the full-scale system residence time.

2.1.3.3 Treated Wastewater Feed. The reactor effluent exits at the bottom of the reactor through a tube and proceeds to the clarifier.

2.1.4 Clarifier. The effluent flows to a clarifier constructed from a 2-liter pear-shaped separatory funnel, modified by removing the stopcock and adding a 25-mm OD glass tube at the bottom. Reactor effluent enters the clarifier through a ½-in. tube inserted to a depth of 3 in. through a stopper at the top of the clarifier. System effluent flows from a ¼-in. tube inserted through the stopper at the top of the clarifier to a drain (or sample bottle when sampling). The underflow from the clarifier leaves from the glass tube at the bottom of the clarifier through an O-ring fitting and a reducer. Flexible tubing connects this fitting to the sludge recycle pump. This pump is coupled to a variable speed pump drive. The discharge from this pump is returned through a tube inserted in a port on the side of the reactor. An additional port is provided near the bottom of the reactor for sampling the reactor contents. Figure 2 illustrates the design of the external clarifier. The mixed liquor from the reactor flows into the center of the clarifier. The clarified system effluent separates from the biomass and flows through an exit near the top of the clarifier. There shall be no headspace in the clarifier.

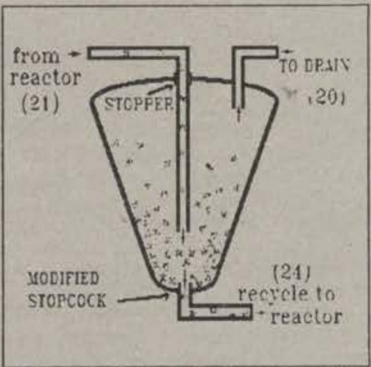

Figure 2. External clarifier (17) design.

2.1.5 Temperature Control Apparatus. The temperature of the contents of the laboratory reactor system shall be maintained at the temperature of the full-scale system, ±2 °C, throughout the testing period.

2.1.5.1 Temperature Monitoring Device. The temperature of the reactor contents shall be monitored with a resistance type temperature probe or a thermocouple and shall be connected to the temperature control device. The temperature probe shall be connected to a temperature readout device (0.1 °C resolution, 10 A output).

2.1.5.2 Reactor Heater. An immersion heater (6-in. or greater heated length, 320 W) is connected to the temperature control device and inserted through the top flange of the reactor. Other types of temperature control devices may be used upon meeting the specifications of section 2.1.5.

2.1.6 Oxygen Control System. Dissolved oxygen concentration shall be maintained at the levels present in the full-scale system, ±0.5 mg/L.

2.1.6.1 Dissolved Oxygen Monitor. Dissolved oxygen is monitored with a polarographic probe (gas permeable membrane) connected to a dissolved oxygen meter (0 to 15 mg/L, 0 to 50 °C).

2.1.6.2 Reactor Pressure Monitor. The reactor pressure is monitored through a port in the top flange of the reactor. This is connected to a gauge control with a span of 5-in. water vacuum to 5-in. water pressure. A relay is activated when the vacuum exceeds an adjustable setpoint which opens a solenoid valve (normally closed) admitting oxygen to the system. The vacuum setpoint controlling oxygen addition to the system shall be set at approximately 2.5 ±0.5 cm water and maintained at this setting except during brief periods when the dissolved oxygen concentration is adjusted.

2.2 Analysis. If the identity of the compounds of interest in the wastewater is not known to the source, a representative sample of the wastewater shall be analyzed in order to identify all of the compounds of interest present. A gas chromatography/mass spectrometry screening method is recommended.

2.2.1 After identifying the compounds of interest in the wastewater, an analytical technique capable of measuring all of those compounds shall be developed (more than one analytical technique may be required, depending on the characteristics of the wastewater). Test Method 18, found in appendix A of 40 CFR part 60, may be used as a guideline in developing the analytical technique. Purge and trap techniques may be used for analysis providing the target components are sufficiently volatile as to make this technique appropriate. The limit of quantitation for each compound shall be determined.[1] If the effluent concentration of any target compound is below the limit of quantitation determined for that compound, use the limit of quantitation concentration as the outlet concentration for that compound in the biodegradation calculations.

2.2.2 Calibration Standards. Calibration standards shall be prepared from pure certified standards in an aqueous medium. Three concentrations of calibration standards for each target component (or for a mixture of components) shall be prepared and analyzed in triplicate daily throughout the analyses of the test samples. At each concentration level, a single calibration shall be within 5 percent of the average of the three calibration results. The low and medium calibration standards shall bracket the expected concentration of the effluent (treated) wastewater. The medium and high standards shall bracket the expected influent concentration.

2.3 Audit Analysis. A performance audit sample shall be analyzed during every compliance test, if available. Audit availability information may be obtained by contacting the Emission Measurement Technical Information Center at (919) 541-2237. The same analytical equipment and analyst used in conducting the compliance test shall be used to conduct the audit analysis.

3. Reagents

3.1 Wastewater. A representative sample of wastewater shall be obtained at the inlet to the full-scale treatment plant if there is an existing full-scale treatment plant (See section 2.1.3). If there is no existing full-scale treatment plant, obtain the wastewater sample as close to the point of generation as possible. The sample shall be collected by pumping the wastewater into the 20-L collapsible container. The loss of volatiles from the wastewater shall be minimized by collapsing the container before filling, by minimizing the time of filling, and by avoiding a headspace in the container after filling. If the wastewater requires the addition of nutrients to support the biomass growth and maintain biomass characteristics, those nutrients are added and mixed with the container contents after the container is filled.

3.2 Biomass. The biomass or activated sludge used for rate constant determination in the bench-scale process shall be obtained from the existing full-scale process or from a representative biomass culture that has been developed for a future full-scale process. This biomass is preferentially obtained from a thickened acclimated mixed liquor sample. The sample shall be collected either by bailing from the mixed liquor in the aeration tank with a weighted container, or by collecting aeration tank effluent at the effluent overflow weir. The sample shall be transported to the laboratory within 12 hours of collection.

4. Procedure. Safety Note: If explosive gases are produced as a byproduct of biodegradation, closely monitor headspace concentration of these gases to insure laboratory safety. Placement of bioreactor system inside a laboratory hood is recommended regardless of byproducts produced.

4.1 Reactor Operation. Mixed liquor shall be charged to the reactor, leaving 5 cm (2 inch) headspace over the liquid surface to minimize entrainment of mixed liquor in the circulating gas. The reactor headplate shall be fastened to the reactor over the liquid surface.

4.1.1 Wastewater Storage. The wastewater sample shall be collected in the 20-L collapsible container. The container shall be stored at 4 °C throughout the testing period. The container is connected to the reactor feed pump.

4.1.2 Wastewater Flow Rate. The hydraulic residence time of the aeration tank is calculated as the ratio of the volume of the tank (L) to the flow rate (L/min). At the beginning of a test the container shall be connected to the feed pump and solution pumped to the reactor at the required flow rate to achieve the calculated hydraulic residence time of the aeration tank.

$$Q_{test} = Q_{fs} \frac{6L}{V_{fs}} \qquad \text{(Eq. 4-1)}$$

where:

Q_{test} = wastewater flow rate (L/min),
Q_{fs} = average flow rate of full-scale process (L/min), and
V_{fs} = volume of full-scale aeration tank (L).

The flow rate in the test apparatus is the same as the flow rate in the full-scale process multiplied by the ratio of bioreactor volume (6 L) to the volume of the full-scale aeration tank. The hydraulic residence time shall be maintained at 90 to 100 percent of the residence time maintained in the full-scale unit. A nominal flow rate is set on the pump based on a pump calibration. Changes in the elasticity of the tubing in the pump head and the accumulation of material in the tubing affect this calibration. The nominal pumping rate shall be changed as necessary based on volumetric flow measurements. The reactor effluent shall be discharged to a wastewater storage, treatment, or disposal facility, except during sampling or flow measurement periods.

4.1.3 Sludge Recycle Rate. The sludge recycle rate shall be set at a rate sufficient to prevent accumulation in the bottom of the clarifier. The air circulation rate shall be set sufficient to maintain the biomass in suspension.

4.1.4 Bioreactor Operation and Maintenance. Temperature, dissolved oxygen concentration, flow rate, and air circulation rate shall be measured and recorded three times throughout each day of testing. At the beginning of each test period, the reactor contents shall be sampled for suspended solids analysis. This sample shall be taken by loosening a clamp on a length of tubing attached to the lower side port. The suspended solids determination shall be made gravimetrically by the Gooch crucible/glass fiber filter method for total suspended solids, in accordance with Standard Methods[3] or equivalent. When necessary, sludge shall be wasted from the lower side port of the reactor, and the volume that is wasted shall be replaced with an equal volume of the reactor effluent. Thickened activated sludge mixed liquor shall be added as necessary to the reactor to increase the suspended solids concentration to the desired level. This mixed liquor shall be pumped to the reactor through the upper side port (Item 24 in Figure 1). The membrane on the dissolved oxygen probe shall be changed before starting the test. The oxygen probe shall be calibrated immediately before the start of the test and each time the membrane is changed. The scrubber solution shall be replaced each weekday with 175 mL 45 percent W/W KOH solution to which five drops of 0.2 percent alizarin yellow indicator in water have been added.

4.1.5 Inspection and Correction Procedures. If the feed line tubing becomes clogged, replace with new tubing. If the flow rate is not within 5 percent of target flow any time the flow rate is measured, reset pump and measure flow rate again until target flow rate is achieved.

4.2 Test Sampling. Two and one half hydraulic residence times after the system has reached the targeted specifications shall be permitted to elapse before the first sample is taken. Effluent samples of the clarifier discharge (Item 20 in Figure 1) and the influent wastewater feed are collected in 40-mL septum vials to which two drops of 1:10 hydrochloric acid (HCl) in water have been added. The clarifier discharge samples shall be taken directly from the drain line. These samples will be composed of the entire flow from the system for a period of several minutes. Feed samples shall be taken from the feed pump suction line after temporarily stopping the reactor feed, removing a connector, and squeezing the collapsible feed container. Both influent and effluent samples shall be analyzed within 8 hours of collection.

4.2.1 Frequency of Sampling. During the test, the wastewater feed and the clarifier effluent shall be sampled at least six times. The sampling intervals shall be separated by at least 8 hours. During any individual sampling interval, the wastewater feed sample shall be taken simultaneously with or immediately after the effluent sample. Calculate the relative standard deviation (RSD) of both the influent and effluent sample concentrations. Both RSD values shall be ≤15 percent. If an RSD value is >15 percent, continue sampling influent and effluent sets of samples until the RSD values are within specifications.

4.2.2 Sampling After Exposure of System to Atmosphere. If, after starting sampling procedures, the bioreactor system is exposed to the atmosphere (due to leaks, maintenance, etc.), at least one hydraulic residence time shall be allowed to elapse before resuming sampling.

5. Operational Checks and Calibration

5.1 Dissolved Oxygen. Fluctuation in dissolved oxygen concentration may occur for numerous reasons, including undetected gas leaks, increases and decreases in mixed liquor suspended solids resulting from cell growth and solids loss in the effluent stream, changes in diffuser performance, cycling of effluent flow rate, and overcorrection due to faulty or sluggish dissolved oxygen probe response. The dissolved oxygen concentration in the reactor shall be controlled by changing the proportion of oxygen in the circulating aeration gas. Should the dissolved oxygen concentration drift below the designated experimental condition, a small amount of aeration gas shall be bled from the system on the pressure side (i.e., immediately upstream of one of the diffusers). This will create a vacuum in the system, triggering the pressure sensitive relay to open the solenoid valve and admit oxygen to the system. Should the dissolved oxygen concentration drift above the designated experimental condition, the oxygen input to the system shall be stopped until the dissolved oxygen concentration approaches the correct level.

5.2 Sludge Wasting. The suspended solids concentration shall be determined (Section 4.1.4) at the beginning of a test, and once per day thereafter during the test. If the test is completed within a two day period, the suspended solids concentration shall be determined after the final sample set is taken. If the suspended solids concentration exceeds the specified concentration, a fraction of the sludge shall be removed from the reactor. The required volume of mixed liquor to remove is determined as follows:

$$V_w = V_r \frac{S_m - S_s}{S_m} \qquad \text{(Eq. 5–1)}$$

where: V_w is the wasted volume (Liters),
V_r is the volume of the reactor (6 Liters),
S_m is the measured solids (g/L), and
S_s is the specified solids (g/L).

Mixed liquor shall be removed from the reactor by loosening a clamp on the mixed liquor sampling tube and allowing the required volume to drain to a graduated flask. The tube shall be clamped when the correct volume has been wasted. The volume of the liquid wasted shall be replaced by pouring the same volume of effluent back into the bioreactor. The waste sludge shall be disposed of properly.

5.3 Sludge Makeup. In the event that the suspended solids concentration is lower than the specifications, makeup sludge shall be added back into the bioreactor. The amount of sludge added shall be determined by the following equation:

$$V_w = V_r \left(\frac{S_s - S_m}{S_w} \right) \qquad \text{(Eq. 5–2)}$$

where: V_w is the volume of sludge to add (Liters),
V_r is the volume of the reactor (6 Liters),
S_w is the solids in the makeup sludge (g/L),
S_m is the measured solids (g/L), and
S_s is the specified solids (g/L).

5.4 Wastewater Pump Calibration. The wastewater flow rate shall be determined by collecting the system effluent for a time period of at least one hour, and measuring the volume with a graduated cylinder. Record the collection time period and volume collected. Determine flow rate. The pump speed shall be adjusted to deliver the specified flow rate.

6. Calculations

6.1 Nomenclature. The following symbols are used in the calculations.

C_i=Average inlet feed concentration for a compound of interest, as analyzed (mg/L)
C_o=Average outlet (effluent) concentration for a compound of interest, as analyzed (mg/L)
X=Biomass concentration, mixed liquor suspended solids (g/L)
t=Hydraulic residence time in the reactor (hours)
V=Volume of the bioreactor (6 L)
Q=Flow rate of wastewater into the reactor, average (L/hour)

6.2 Residence Time. The hydraulic residence time of the reactor is equal to the ratio of the volume of the reactor (L) to the flow rate (L/h)

$$t = \frac{V}{Q} \qquad \text{(Eq. 6–1)}$$

6.3 Rate of Biodegradation. The rate of biodegradation for each component shall be calculated with the following equation:

$$\text{Rate} \left(\frac{\text{mg}}{\text{L} - \text{h}} \right) = \frac{C_i - C_o}{t}$$

(Eq. 6–2)

6.4 First-Order Biorate Constant. The first-order biorate constant (K1) for each component shall be calculated with the following equation:

$$\text{K1} \left(\frac{\text{L}}{\text{g} - \text{h}} \right) = \frac{C_i - C_o}{t\, C_o\, X}$$

(Eq. 6–3)

6.5 Determination of Percent Air Emissions and Percent Biodegraded. The first-order biorate constant shall be used in a mathematical model cited in the applicable regulation (e.g., Water7[4], Chemdat7[5]), which will calculate the fate of the compounds of interest present in the wastewater. Input the parameters of the full-scale system into the model program.

6.6 Relative Standard Deviation (RSD). Determine the standard deviation of both the influent and effluent sample concentrations (S) using the following equation:

$$\text{RSD} = \frac{100}{\overline{S}} \left(\sum_{i=1}^{n} \frac{(S_i - \overline{S})^2}{(n-1)} \right)^{1/2}$$

(Eq. 6–4)

7. Bibliography

1. "Guidelines for data acquisition and data quality evaluation in Environmental Chemistry," Daniel MacDoughal, Analytical Chemistry, Volume 52, p. 2242, 1980.

2. Test Method 18, 40 CFR part 60, appendix A.

3. Standard Methods for the Examination of Water and Wastewater, 16th Edition, Method 209C, Total Suspended Solids Dried at 103–105 °C, APHA, 1985.

4. Water7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)-Air Emission Models, U. S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

5. Chemdat7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)-Air Emission Models, U. S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

Method 305—Method for the Measurement of Individual Volatile Organics in Wastewater

1.0 Applicability and Principle

This procedure may be used to determine the emission potential of individual volatile organics (VOs) in wastewater. The purge conditions established by Method 25D (40 CFR part 60, appendix A) are used to remove VOs from a 10-g sample of wastewater suspended in a 50/50 solution of polyethylene glycol (PEG) and water. The purged VOs are collected and analyzed using an appropriate technique. The recovery efficiency of the collection and analysis technique must be determined for all of the target pollutants and a correction factor, if necessary, must be determined and applied. This Method describes a gas chromatography technique, but any analytical technique may be used as long as the source can demonstrate adequate recovery of the target pollutants as described in the Method.

2.0 Apparatus and Materials

2.1 Method 25D Purge Apparatus.

2.1.1 Purge Chamber. The purge chamber must accommodate the 10-g sample of wastewater suspended in a matrix of 50 mL of PEG and 50 mL of deionized, hydrocarbon-free water. Three fittings are used on the glass chamber top. Two #7 Ace-threads are used for the purge gas inlet and outlet connections. A #50 Ace-thread is used to connect the top of the chamber to the base (see Figure 1). The base of the chamber has a side-arm equipped with a #22 Sovirel fitting to allow for easy sample introductions into the chamber. The dimensions of the chamber are shown in Figure 1.

2.1.2 Flow Distribution Device (FDD). The FDD enhances the gas-to-liquid contact for improved purging efficiency. The FDD is a 6-mm-OD by 30-cm long glass tube equipped with four arm bubblers as shown in Figure 1. Each arm has an opening of 1 mm in diameter.

2.1.3 Coalescing Filter. The coalescing filter serves to discourage aerosol formation of sample gas once it leaves the purge chamber. The glass filter has a fritted disc mounted 5 cm from the bottom. Two #7 Ace-threads are used for the inlet and outlet connections. The dimensions of the chamber are shown in Figure 2.

2.1.4 Oven. A gravity-convection or forced-convection airflow oven capable of maintaining the purge chamber and coalescing filter at 75±2 °C.

2.1.5 Toggle Valve. An on/off valve constructed from brass or stainless steel rated to 100 psig. This valve is placed in line between the purge nitrogen source and the flow controller.

2.1.6 Flow Controller. High-quality stainless steel flow controller capable of restricting a flow of nitrogen to 6±0.06 L/min at 40 psig.

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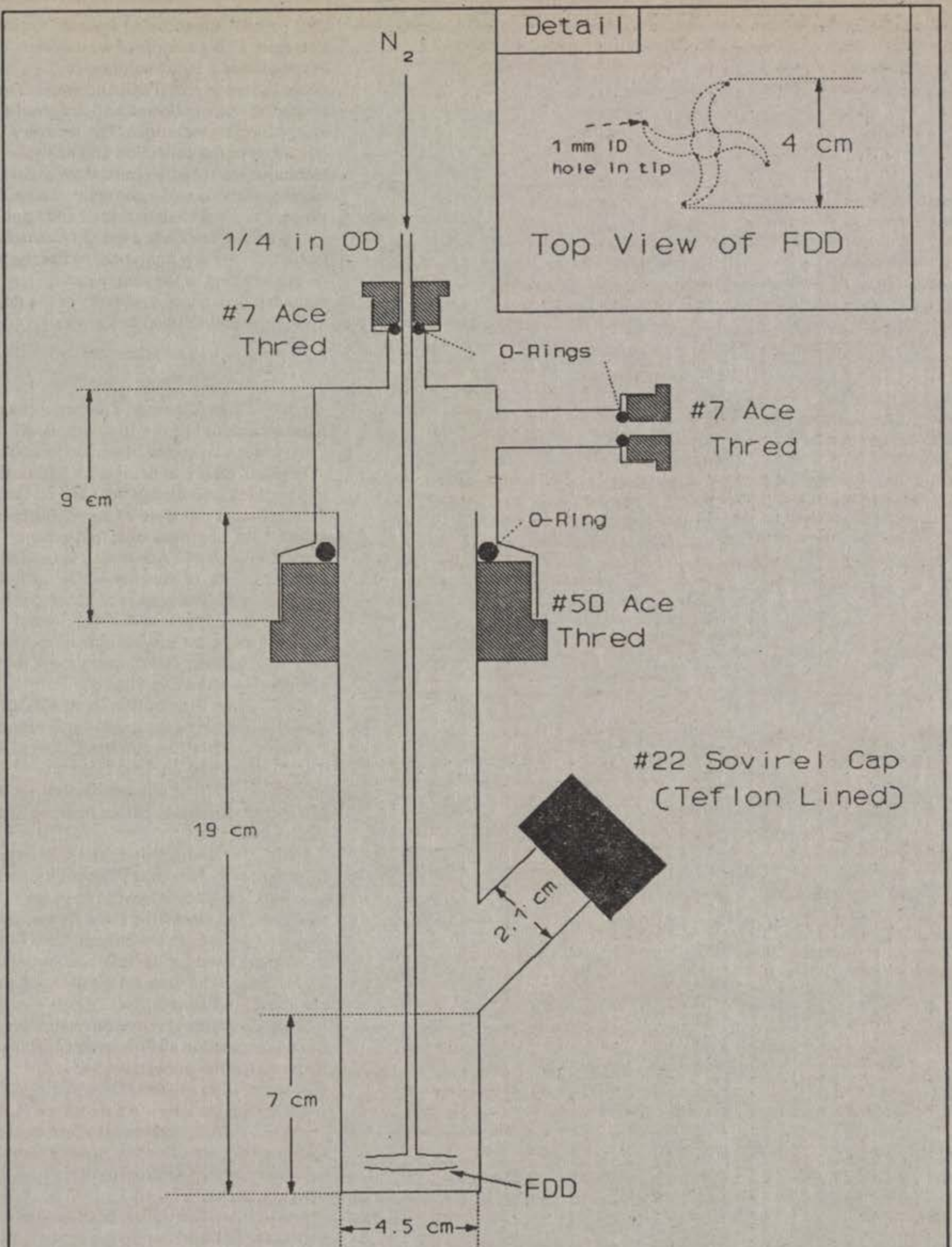

Figure 1. Schematic of Purge Chamber

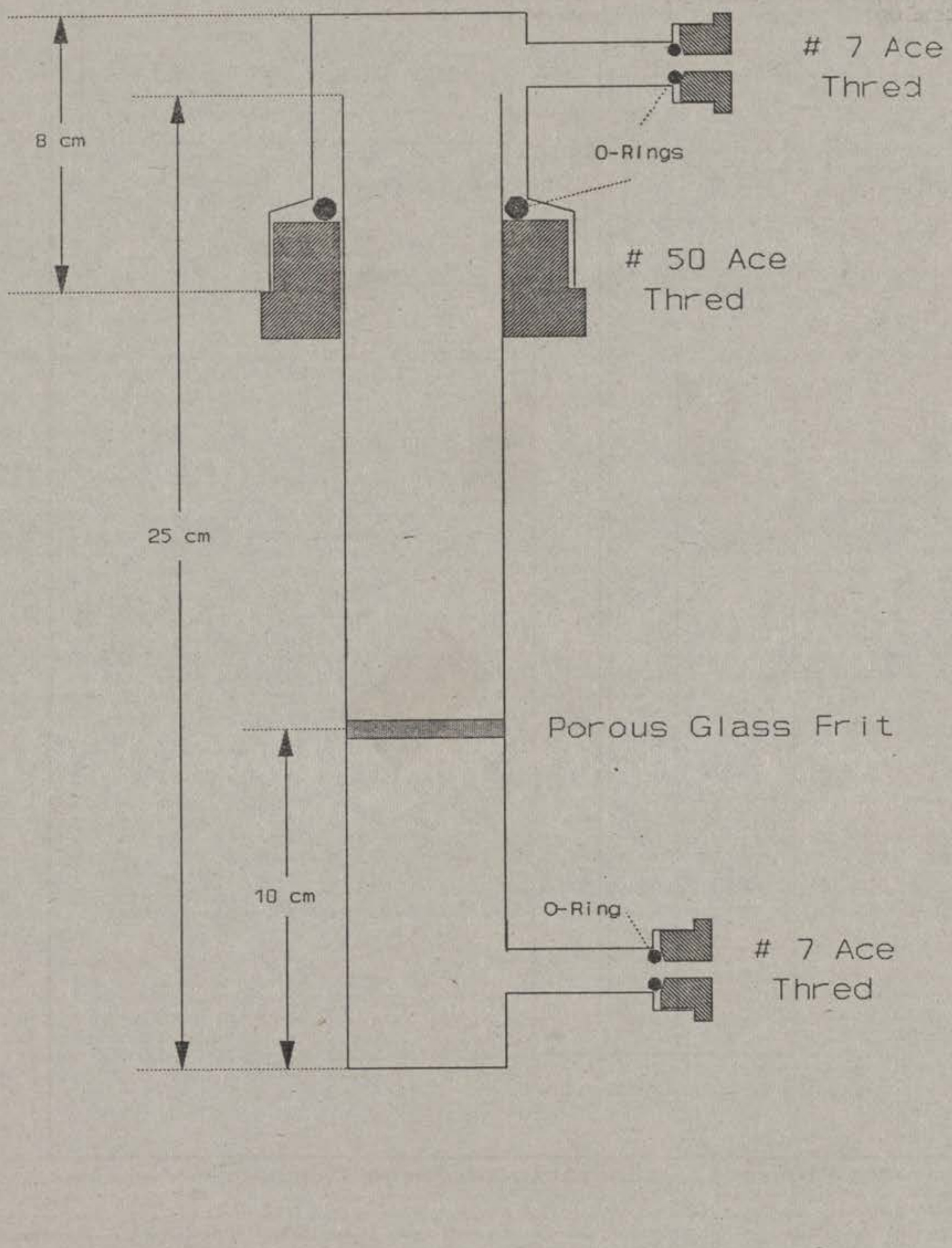

Figure 2. Schematic of Coalescing Filter

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2.1.7 Polyethylene Glycol Cleaning System.

2.1.7.1 Round-Bottom Flask. One liter, three-neck round-bottom flask for cleaning PEG. Standard taper 24/40 joints are mounted on each neck.

2.1.7.2 Heating Mantle. Capable of heating contents of the 1-L flask to 120 °C.

2.1.7.3 Nitrogen Bubbler. Teflon or glass tube, 0.25 in. OD.

2.1.7.4 Thermometer. Partial immersion glass thermometer.

2.1.7.5 Hose Adapter. Glass with 24/40 standard tapered joint.

2.1.8 Reagents..

2.1.8.1 Polyethylene Glycol. Ninety-eight percent pure organic polymer with an average molecular weight of 400. Volatile organics are removed from the PEG prior to use by heating to 120 °C and purging with pure nitrogen at 1 L/min for 2 hours. The PEG is stored under a nitrogen purge maintained at 1 L/min until used. A typical apparatus used to clean the PEG is shown in Figure 3.

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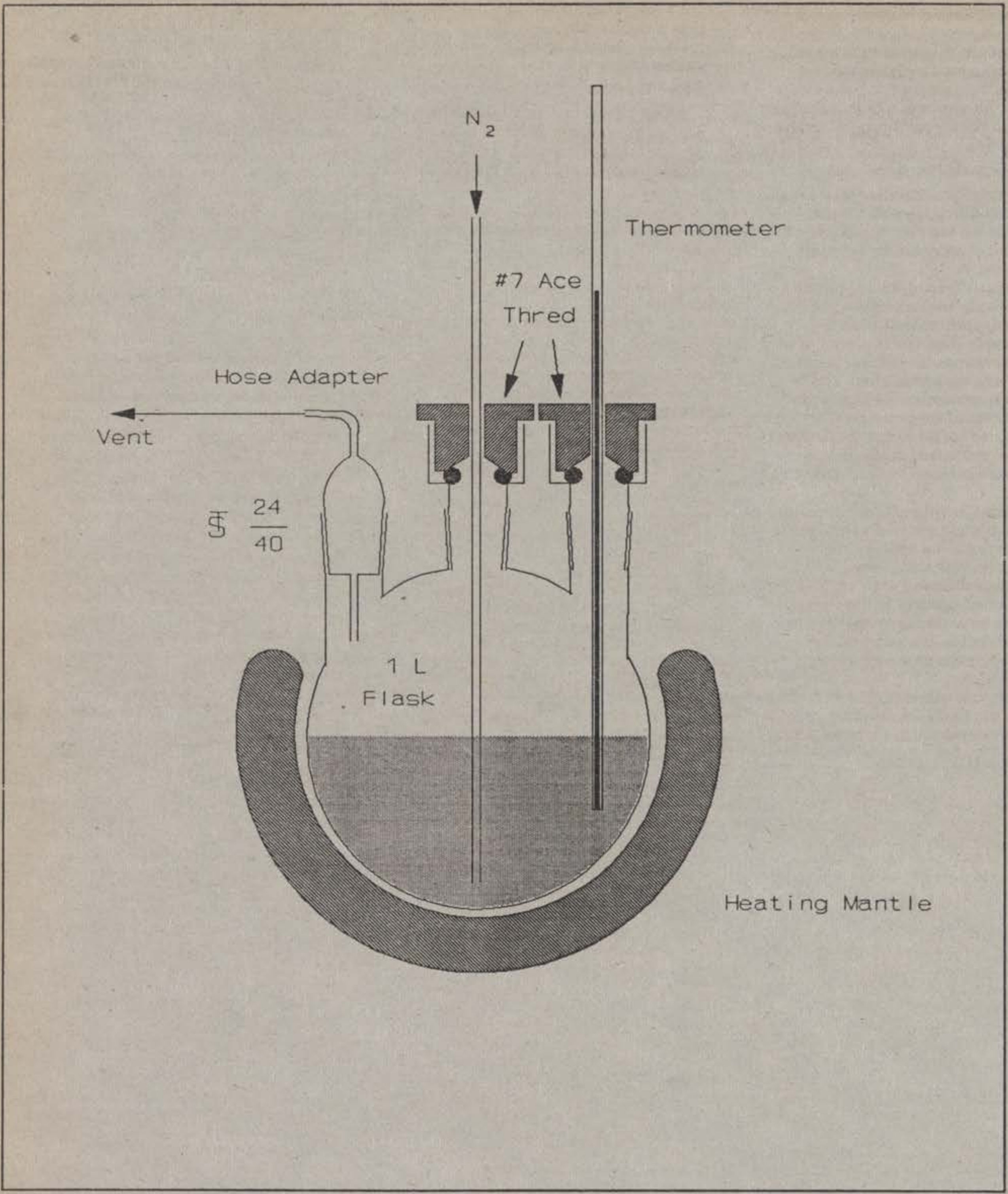

Figure 3. Schematic of PEG Cleaning System

2.1.8.2 Water. Organic-free deionized water is required.

2.1.8.3 Nitrogen. High-purity nitrogen (less than 0.5 ppm total hydrocarbons) is used to remove test compounds from the purge matrix. The source of nitrogen shall be regulated continuously to 40 psig before the on/off toggle valve.

2.2 Volatile Organic Recovery System.

2.2.1 Injection Port. Stainless steel 1/4 in. OD compression fitting tee with a 6-mm septum fixed on the top port. The injection port is the point of entry for the internal standard solution.

2.2.2 Knockout Trap. A 25-mL capacity glass reservoir body with a modified half-stem impinger (approximately 6 cm in length). The empty impinger is placed in an ice water bath between the internal standard injection port and the sorbent trap. The knockout trap is recommended due to the high water content of the purge gas.

2.2.3 Insulated Ice Bath. A 350-mL dewar or other type of insulated bath is used to maintain ice water around the knockout trap, if one is used.

2.2.4 Sorbent Cartridges. Commercially available glass or stainless steel cartridge packed with one or more appropriate sorbents. The cartridge shall have a minimum outside diameter of 8 mm. The amount of adsorbent packed in the cartridge depends on the breakthrough volume of the test compounds but is limited by back pressure caused by the packing (not to exceed 7 psig).

2.2.5 Volumetric Glassware. Type A glass 10-mL volumetric flasks for measuring a final volume from the water catch in the knockout trap.

2.2.6 Thermal Desorption Unit. A clam-shell type oven is required for the analysis of direct thermal desorption sorbent tubes. The oven shall be capable of increasing the temperature of the desorption tubes rapidly to recommended desorption temperature.

2.2.7 Ultrasonic Bath. Small bath used to agitate sorbent material and desorption solvent. Ice water shall be used in the bath because of heat transfer caused by operation of the bath.

2.2.8 Desorption Vials. Four-dram (15-mL) capacity borosilicate glass vials with Teflon-lined caps.

2.2.9 Reagents.

2.2.9.1 Water. Same as specified in Section 2.1.8.2.

2.2.9.2 Desorption Solvent. Appropriate high-purity (99.99 percent) solvent for desorption shall be used. Analysis shall be performed on each lot to determine purity.

2.3 Analytical System. A gas chromatograph (GC) is commonly used to analyze the test compounds from the sample collection and recovery procedure. If a GC technique has been chosen as the analytical technique, Method 18 (40 CFR Part 60, Appendix A) may be used as a guideline for determining the appropriate GC column and GC detector based on the test compounds to be determined.

2.3.1 Gas Chromatograph. The GC shall be equipped with a constant-temperature liquid injection port or a heated sampling loop/valve system, as appropriate. The GC oven shall be temperature-programmable over the useful range of the GC column. The choice of detectors is based on the test compounds to be determined.

2.3.2 GC Column. Select the appropriate GC column based on (1) literature review or previous experience, (2) polarity of the analytes, (3) capacity of the column, or (4) resolving power (i.e., length, diameter, film thickness) required.

2.3.3 Data System. A programmable electronic integrator for recording, analyzing, and storing the signal generated by the GC detector.

2.3.4 Reagents. The gases required for GC operation shall be of the highest obtainable quality. Consult the operating manual for recommended settings.

3.0 Sample Purge and Analysis Procedure.

3.1 Purge Procedure.

3.1.1 Sample Recovery. Sample recovery refers to the portion of this method that uses the purge conditions established by Method 25D to remove the VOs from the sample matrix. The glassware and associated fittings (see Figure 4) shall be assembled and leak-checked to approximately 7 psig.

3.1.2 The sample collection procedure in Method 25D shall be used to collect 10 g of wastewater into PEG, cool, and ship to the laboratory. Remove the sample container from the cooler and wipe the exterior to remove any ice or water. Weigh the container and sample to the nearest 0.01 g. Pour the sample from the container into the purge flask. Rinse the sample container three times with approximately 6 mL of PEG (or the volume needed to total 50 mL of PEG in the purge flask), transferring the rinses to the purge flask. Add 50 mL of organic-free deionized water to the purge flask.

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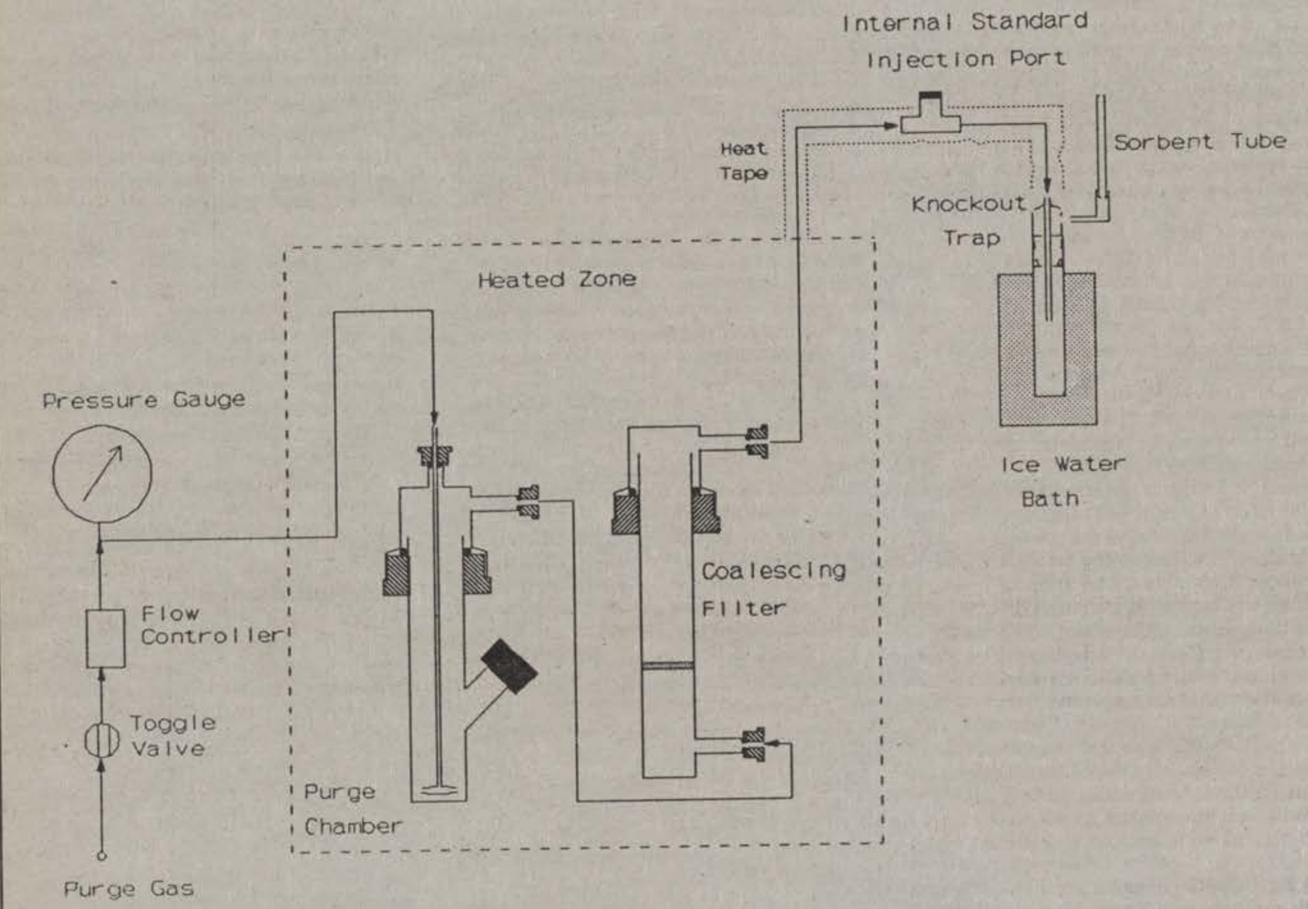

Figure 4. Schematic of Purge and Recovery Apparatus

3.1.3 Allow the purge matrix to equilibrate to 75±2 °C. Begin the sample recovery process by turning the toggle valve on, thus allowing a 6-L/min flow of pure nitrogen through the purge chamber.

3.1.4 Stop the purge after 30 min. Immediately remove the sorbent tube from the apparatus and cap both ends. Remove the knockout trap (if used) and transfer the water catch to a 10-mL volumetric flask. Rinse the trap with organic-free deionized water and transfer the rinse to the volumetric flask. Dilute to the 10-mL mark with water. Transfer the water sample to a sample vial and store at 4 °C with zero headspace.

3.2 Sample Analysis Procedure. Sample analysis refers to the portion of this method that uses the analytical procedures outlined in Method 18 for calibration of the GC and analysis of the sorbent tube. An alternative analytical procedure involves direct thermal desorption of test compounds from the sorbent tubes to a secondary focusing unit (either sorbent or cryogen based). The test compounds are then transferred to the GC system for analysis. Other sample analysis techniques may be used upon meeting the recovery criteria listed in Section 3.4.

3.2.1 Recover the test compounds from the sorbent tubes that require solvent desorption by transferring the adsorbent material to a sample vial containing the desorption solvent. The desorption solvent shall be the same as the solvent used to prepare calibration standards. The volume of solvent depends on the amount of adsorbed material to be desorbed (1.0 mL per 100 mg of adsorbent material is the general guideline) and also on the amount of test compounds present. Final volume adjustment and/or dilution can be made so that the concentration of test compounds in the desorption solvent is bracketed by the concentration of the calibration solutions. Ultrasonicate the desorption solvent for 15 min in an ice bath. Allow the sample to sit for a period of time so that the adsorbent material can settle to the bottom of the vial. Transfer the solvent with a pasteur pipet (minimizing the amount of adsorbent material taken) to another vial and store at 4 °C.

3.2.2 The GC detector shall be calibrated with a minimum of three standards (low, medium, high) whose concentrations bracket the expected concentrations of test compounds from the adsorbent tubes. If a solvent desorption technique is used, liquid calibration standards at three concentration levels shall be prepared from a stock solution containing each organic test compound. For the analysis of sorbent tubes designed for direct thermal desorption, certified gaseous standards containing a mixture of the test compounds or individual test compounds bracketing the expected concentration range shall be used to calibrate the GC detector.

3.2.3 The analytical system shall be certified free from contaminants before a calibration is performed. Analyze a blank to determine the cleanliness of the system. The calibration standards are used to determine the linearity of the analytical system. Analyze daily the three calibration standards in triplicate starting with the lowest level and continuing to the highest level. If the triplicate analyses do not agree within 5 percent of their average, additional analyses will be needed. Calculate the response factor (Equation 3, section 4.4) from the average area counts of the three injections. Average the response factors of the standards for each compound. The linearity of the detector is acceptable if the response factor of each compound at a particular concentration is within 5 percent of the overall mean response factor for that compound.

3.2.4 Analyze the samples (the desorption solvent or the adsorbent tubes utilizing thermal desorption) using the same analytical parameters used for the calibration standard. Triplicate injections must agree within 5 percent of their average if solvent desorption is used, or within 10 percent of their average if direct thermal desorption is used. Calculate the total weight detected for each compound (Equation 4, section 4.5). The slope (area/amount) and y-intercept are calculated from the line bracketed between the two closest calibration points. The final concentration of each individual test compound is calculated (Equation 5, section 4.6) by dividing the total weight detected for that compound (Equation 4, section 4.5) by the weight of the original sample (Equation 2, section 4.3).

3.3 Water Blank. A system blank shall be analyzed with each set of wastewater samples and during the recovery efficiency study to determine the cleanliness of the purge and recovery system. A water blank is generated by adding 60 mL of organic-free deionized water to 50 mL of PEG in the purge chamber. Sample and analyze the water blank as the wastewater samples would be treated (sections 3.1 and 3.2).

3.4 Recovery Efficiency Study. Determine the individual recovery efficiency (RE) for each compound of interest. To determine the RE, generate a water blank (section 3.3) and use the internal standard injection port to introduce a known volume of spike solution containing the compounds of interest at the levels expected in the wastewater sample. Follow the purge procedures outlined in section 3.1. Introduce the spike solution by injecting a known volume into the injection port located between the Method 25D oven and the knockout trap. The injection of the spike solution shall be made immediately after the purge gas has been introduced (section 3.1.3). Analyze the recovery efficiency evaluation sample using the techniques to be utilized in analyzing the wastewater samples (section 3.2). Determine the recovery efficiency (Equation 1, section 4.2) by comparing the amount of compound recovered to the theoretical amount spiked.The RE shall be ≥0.50 and ≤1.30 for each of the compounds of interest. If the RE is <0.50 or >1.30 for a particular compound(s), an alternative sample collection and analysis technique shall be used for that compound(s) (i.e., change the adsorbent material, change the desorption solvent, use direct thermal desorption of test compounds from the sorbent tubes, choose a different analytical technique).

4.0 Calculations

4.1 Definitions and Variables

A_S=Mean area counts of test compound in standard when analyzed by analytical instrument.

A_u=Mean area counts of test compound in sample.

b=y-intercept of the line formed between the two closest calibration standards that bracket the concentration of the sample.

C_T=Theoretical amount of test compound (µg) in calibration standard.

CF=Correction for adjusting final amount of sample detected for losses during individual sample runs.

PPM=Final concentration of test compound in waste sample (µg/g).

RE=Recovery efficiency for adjusting final amount of sample detected for losses due to inefficient trapping and desorption techniques.

RF=Response factor for a test compound, calculated from a calibration standard.

S=Slope of the line (area counts/C_T) formed between two closest calibration points that bracket the concentration of the test compound in the sample.

W_B=Weight of test compounds in water blank (µg).

W_C=Actual weight of test compound in spike solution based on theoretical amount in recovery efficiency study (µg).

W_E=Presampling weight of vial and PEG for the wastewater sample (g).

W_F=Postsampling weight of vial, PEG and wastewater for the sample (g).

W_S=Weight of wastewater sample (g).

W_T=Weight of test compound detected (µg).

W_X=Weight of test compound measured during analysis of recovery efficiency spike samples (µg).

4.2 Recovery efficiency for determining trapping/desorption efficiency of individual test compounds in the spike solution, decimal value.

$$RE=\frac{W_X-W_B}{W_C} \qquad (1)$$

4.3 Weight of wastewater sample (g).

$$W_S=W_F-W_E \qquad (2)$$

4.4 Response Factor for individual test compounds.

$$R.F.=\frac{C_T}{A_S} \qquad (3)$$

4.5 Corrected weight of a test compound in the sample, in µg.

$$W_T=\frac{A_u-b}{S}\times\frac{1}{RE}\times\frac{1}{CF} \qquad (4)$$

4.6 Final concentration of a test compound in the sample in ppmw.

$$PPM=\frac{W_T}{W_S} \qquad (5)$$

[FR Doc. 92-28292 Filed 12-30-92; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-4534-4]

Standards of Performance for New Stationary Sources; Appendix A—Test Methods; Revisions to Methods 18 and 26 and Addition of Method 26A to Appendix A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this action is to propose revisions to Method 18, "Measurement of Gaseous Organic Compound Emissions by Gas Chromatography" and to Method 26, "Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources—Midget Impinger Method," and to propose the addition of Method 26A, "Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources—Isokinetic Method," to appendix A of 40 CFR part 60. Proposed regulations published in a separate announcement under 40 CFR part 63 entitled "National Emission Standards for Organic Hazardous Air Pollutants from Synthetic Organic Chemical (SOCMI) Industry," include testing requirements for hydrogen halides and halogens after incineration control devices. Method 18 is being revised to clarify the phrase "engineering judgment" as it relates to choosing a sampling methodology. Method 26 for anisokinetic determination of hydrogen chloride emissions is being revised to add provisions for determining emissions of other hydrogen halides and halogens. Method 26A is being proposed as an isokinetic version of Method 26.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed test methods.

DATES: *Comments.* Comments must be received on or before March 31, 1993.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 21, 1993, a public hearing will be held on February 10, 1993 beginning at 10 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by January 21, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket Section (LE-131), Attention: Docket Number A-90-19, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Robin R. Segall, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-0893.

Docket. Docket No. A-90-19, containing materials relevant to this rulemaking, is available for public inspection and copying between 8 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M-1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Terry Harrison or Robin R. Segall, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5233.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Method 18 was developed for and is currently applicable to the speciation of total gaseous organics in a sample to determine emissions of individual organic compounds. In response to questions from industry representatives seeking to use the method for compliance demonstrations, the EPA is proposing to clarify the phrase "engineering judgment" as it relates to choosing a sampling and analytical methodology. In the proposed revision, an owner or operator will perform a laboratory evaluation of the methodology chosen to sample and analyze the compounds of interest. This evaluation would be used to characterize the effectiveness of the methodology and correct for any inefficiency in the chosen technique.

Under subpart G of part 63, EPA is proposing standards to limit emissions of halides and halogens from incineration or control of halogenated organic vent streams at SOCMI facilities. Method 26 currently prescribes only measurement of hydrogen chloride emissions with sampling at a constant rate. The revisions being proposed today will expand the method's applicability to other hydrogen halides and halogens. The addition of Method 26A will provide an alternative to the revised Method 26 and will allow for isokinetic sampling of gas streams that are saturated with moisture.

Method 26 was developed for and is currently applicable to determining hydrogen chloride emissions from municipal waste combustors. Methods similar to Method 26 and Method 26A were developed for the measurement of hydrogen chloride (HCl) and chlorine (Cl_2) in emissions from hazardous waste incinerators and boilers and industrial furnaces burning hazardous waste (56 FR 32728, July 17, 1991). Application of a method to a source with emission characteristics "similar" to those under which it was validated is addressed in section 12 of proposed Method 301, "Field Validation of Emission Concentrations from Stationary Sources" (56 FR 27370, June 13, 1991). The Agency has compared the characteristics of incinerated SOCMI process vent gases to emissions from municipal waste combustors and hazardous waste incinerators and plans to waive the Method 301 validation requirements for applying the methodology developed for waste incinerators to the incinerated SOCMI vent gases. The Agency believes that the sample gas matrices from incinerated SOCMI process vent gases are similar to those of waste incinerators and do not contain interferences that would warrant a validation of the methodology for measurement of HCl or (Cl_2) emissions from this source. This initial opinion is based, in part, on the relative insensitivity of the methodology to interferences expected in the SOCMI exhaust gas streams.

The revisions to Method 26 as well as Method 26A also extend the applicability of the methodology in Method 26 and the HCl/(Cl_2) methods developed for hazardous waste incinerators and boilers and industrial furnaces burning hazardous waste to measurement of hydrogen bromide (HBr), hydrogen fluoride (HF), and bromine (Br_2). The applicability extension is based on limited data and the expected similar behavior of these compounds to HCl and (Cl_2) in regard to sampling and analytical procedures. Because of its extreme reactivity, fluorine (F_2) should not be present in the sample matrix and is not addressed by the methods. Iodine (I_2) and hydrogen iodide (HI) are also not covered by the methods because few, if any, of the organics controlled by the SOCMI process vent incinerators will contain the iodine ion and, additionally, there are no known data to support measurement of I_2 and HI with this technique.

The Agency intends to assess the methods further, prior to promulgation, through laboratory and field evaluations. A study is underway concerning the potential negative bias in Method 26A at HCl levels below 20 ppm; specifically, the study is determining the need for replacing certain glass components in the sampling train with Teflon® to reduce surface adsorption effects. Another study is planned to address sample stability, particularly in regard to the species created by hydrolysis of the halogens in the alkaline solution in the sampling train. Finally, a laboratory and field evaluation of Method 26A will be conducted to assess the bias and precision of the method for the target analytes. To assist in its assessment, the Agency solicits comments on available information on the proposed methodology. Specifically, the Agency solicits comments with supporting data to better define the compounds present in the gas matrices which may, for the hydrogen halides and halogens specified in the methods, (1) be analytical interferences, (2) interfere with their quantitative collection in the impinger solutions, or (3) affect sample stability. Comments should be addressed to the Air Docket listed in the ADDRESSES section.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rule in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket in Washington, DC (see ADDRESSES section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A)).

C. Office of Management and Budget Review

1. Paperwork Reduction Act.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

2. Executive Order 12291 Review.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. The proposal of these test methods is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, and Synthetic organic chemical manufacturing.

Dated: October 29, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 60, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Appendix A [Amended]

2. In appendix A, Method 18 is proposed to be amended by adding paragraph (c) to section 3 and by revising sections 7.4.4.1 and 7.4.4.5 and by adding section 7.6 to read as follows:

Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography

* * * * *

3. Precision and Accuracy

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(c) Recovery. After developing an appropriate sampling and analytical system for the pollutants of interest, conduct the procedure in section 7.6. Submit the data and results of the recovery procedure with the reporting of results under section 7.5.

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7.4.4 * * *

7.4.4.1 Determine the recovery efficiency of the pollutants of interest according to section 7.6.

7.4.4.2 * * *

7.4.4.3 * * *

7.4.4.4 * * *

7.4.4.5 Calculations. All calculations can be performed according to the respective NIOSH method. Correct all sample volumes to standard conditions. If a sample dilution system has been used, multiply the results by the appropriate dilution ratio. Correct all results according to the procedure in section 7.6.3.

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7. * * *

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7.6 Recovery Study. After conducting the presurvey and identifying all of the pollutants of interest, assemble (in the laboratory or on-site) the sampling and analytical system to be used in conducting the source test.

7.6.1 Obtain a certified gaseous standard (or prepare a gaseous standard as described in section 6.2.1 or 6.2.2) containing all of the pollutants of interest present in the source gas stream at the level of the standard (±10 percent). If complying with an efficiency standard (determining the percent efficiency of a control device), the concentration of each target pollutant in the standard shall be at the level of the outlet to the control device (±10 percent).

7.6.2 If an integrated bag sampling system is to be used at the source (section 7.1), follow the procedure specified in section 7.6.2.1. If a direct interface (section 7.2) or a dilution interface (section 7.3) sampling and analysis procedure is to be used at the source, follow the procedure in section 7.6.2.2. If an adsorption tube procedure (section 7.4) is to be used at the source, follow the procedure in section 7.6.2.3.

7.6.2.1 Set up the sampling system including any conditioning system and one of three sampling bags exactly as it would be assembled at the source. Attach the gaseous standard at the inlet to the sampling system (i.e., the tip of the sampling probe). Sample the gaseous standard exactly as you would extract a sample from the source. Analyze the standard sample as the source sample would be analyzed. Repeat this procedure three times (sample and analyze three separate bag samples).

7.6.2.2 Set up the on-line GC, sample line, and any sample conditioning systems exactly as they would be at the source (if using a dilution interface sampling system, set up the heat trace and dilution system as they would be at the source). Attach the gaseous standard at the inlet to the sampling system (i.e., the tip of the sampling probe). Sample the gaseous standard exactly as you would extract a sample from the gas stream of the source. Analyze the standard as the source gas would be analyzed. Repeat this procedure three times (sample and analyze three standard samples).

7.6.2.3 Assemble the sampling system exactly as it would be set up at the source, using the same amounts and number of adsorption tubes as those to be used at the source. Attach the gaseous standard at the inlet to the sampling train (i.e., the tip of the sampling probe). Sample the standard at the flow rate and sampling times to be used at the source. Desorb and analyze the adsorbent tubes in the laboratory using the procedures to be applied to the source samples. Repeat this procedure three times.

7.6.3 Calculations. The relative standard deviation of the three results for each pollutant of interest shall be ≤10 percent. Calculate the theoretical concentration for each compound based on standard concentration, time sampled (if using adsorbent tubes or bags), and flow rate of the gas. Calculate the measured concentration of each compound based on the analytical results. Calculate fraction recovered by dividing measured concentration by theoretical concentration. The average fraction recovered (of the three runs) shall be ≥0.7 and ≤1.30 for each compound of interest. If average fraction recovered <0.7 or >1.30 for a particular compound, the sampling and analytical techniques are not acceptable for that compound. If the average fraction recovered is ≥0.7 and ≤1.30 for a compound, correct all of the results from the source test before submitting the data by dividing source concentration by the average fraction recovered for each compound.

* * * * *

3. It is proposed that Method 26 of 40 CFR part 60, appendix A be amended by revising the title; by revising sections 1.1, 1.2, 1.3, 1.5, 1.6, 2.1.3, the first sentence of 2.1.4, 2.1.5, 2.2.2, the heading of section 3.1.2, sections 3.1.3, 3.2.2, 3.2.3, 4.1.1, 4.2, 4.3, 4.4.2, 4.4.3, 5.2, 7.2, 7.3, 7.4; by revising Figure 26–1; and by adding references 4 and 5 to section 8 to read as follows:

Appendix A—Test Methods

* * * * *

Method 26—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources—Midget Impinger Method

1. * * *

1.1 Applicability. This method is applicable for determining emissions of hydrogen halides (HX) [hydrogen chloride (HCl), hydrogen bromide (HBr), and hydrogen fluoride (HF)] and halogens (X_2) [chlorine ($C1_2$) and bromine (Br_2)] from stationary sources. Sources, such as those controlled by wet scrubbers, that emit acid particulate matter must be sampled using Method 26A. [Note: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.]

1.2 Principle. An integrated sample is extracted from the source and passed through dilute sulfuric acid and dilute sodium hydroxide solutions which collect the gaseous hydrogen halides and halogens, respectively. The hydrogen halides are solubilized in the acidic solution and form chloride (Cl^-), bromide (Br^-), and fluoride (F^-) ions. The halogens have a very low solubility in the acidic solution and pass through to the alkaline solution where they are hydrolyzed to form a proton (H^+), the halide ion, and the hydrohalous acid (HClO or HBrO). The halide ions in the separate solutions are measured by ion chromatography (IC).

1.3 Interferences. Volatile materials, such as chlorine dioxide (ClO_2) and ammonium chloride (NH_4Cl), which produce halide ions upon dissolution during sampling are potential interferents. Interferents for the halide measurements are the halogen gases which disproportionate to a hydrogen halide and a hydrohalous acid upon dissolution in water. The use of acidic rather than neutral or basic solutions for collection of the hydrogen halides greatly reduces the dissolution of any halogens passing through this solution. High concentrations of nitrogen oxides (NO_x) may produce sufficient nitrate (NO_3^-) to interfere with measurements of very low Br^- levels.

* * * * *

1.5 Sample Stability. The collected Cl^- samples can be stored for up to 4 weeks.

1.6 Detection Limit. The analytical detection limit for Cl^- is 0.1 μg/ml. Detection limits for the other analytes should be similar.

* * * * *

2. * * *

2.1 * * *

BILLING CODE 6560-50-M

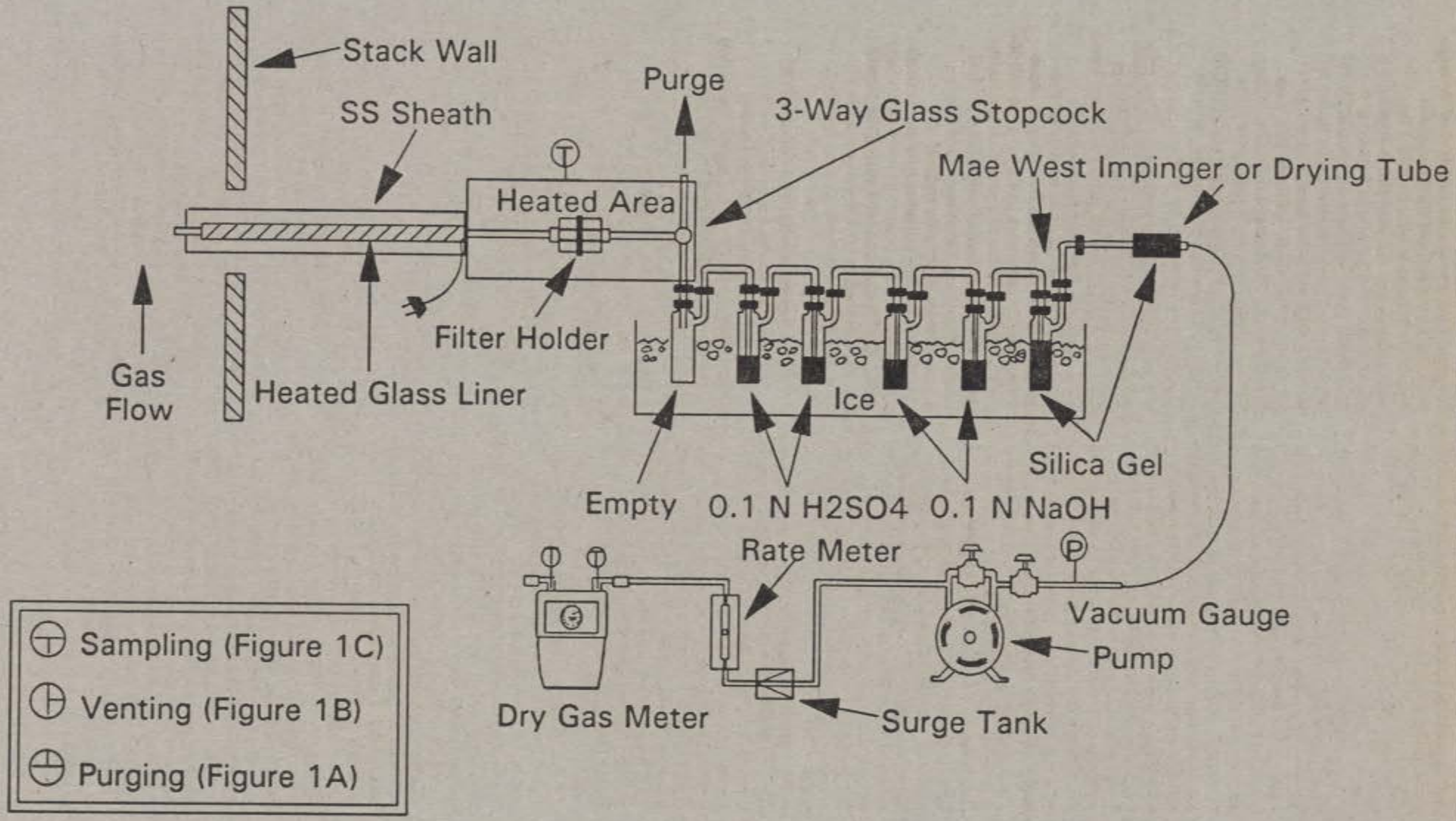

Figure 26-1. Sampling train.

BILLING CODE 6560-50-C

2.1.3 Sample Impingers. Four 30-ml midget impingers with leak-free glass connectors. Silicone grease may be used, if necessary, to prevent leakage. For sampling at high moisture sources or for sampling times greater than one hour, an additional midget impinger with a shortened stem (such that the gas sample does not bubble through the collected condensate) should be used in front of the first impinger.

2.1.4 Drying Tube or Impinger. Tube or impinger (Mae West or midget design) filled with 6- to 16-mesh indicating type silica gel, or equivalent, to dry the gas sample and to protect the dry gas meter and pump. * * *

2.1.5 Filter. A 25- or 47-mm Teflon^R mat, Pallflex^R TX40H175 or equivalent. Locate in a glass, quartz, or Teflon^R filter holder with a Teflon^R or other inert filter support inside a filter box heated to 121 °C (250 °F). When the stack gas temperature exceeds 210 °C (410 °F) and the HCl concentration is greater than 20 ppm, a quartz-fiber may be used.

* * * * *

2.2 * * *

2.2.2 Storage Bottles. 100- or 250-ml, high-density polyethylene bottles with Teflon^R screw cap liners to store impinger samples.

* * * * *

3. * * *

3.1 * * *

3.1.2 Acidic Absorbing Solution, 0.1 N Sulfuric Acid ($H_{22}SO_4$). * * *

3.1.3 Alkaline Absorbing Solution, 0.1 N Sodium Hydroxide (NaOH). To prepare 100 ml of the alkaline absorbing solution for the second impinger pair, dissolve 0.40 g of solid NaOH in about 90 ml of water and adjust the final volume to 100 ml using additional water. Shake well to mix the solution.

3.2 * * *

3.2.2 Blank Solutions. Separate blank solutions of the absorbing reagents should be prepared for analysis with the field samples. Dilute 30 ml of each absorbing solution to 100 ml with water in separate volumetric flasks.

3.2.3 Halide Salt Stock Standard Solutions. Prepare concentrated stock solutions from reagent grade sodium chloride (NaCl), sodium bromide (NaBr), and sodium fluoride (NaF). Each must be dried at 110 °C for two or more hours and then cooled to room temperature in a desiccator immediately before weighing. Accurately weigh 1.6 to 1.7 g of the dried NaCl to within 0.1 mg, dissolve in water, and dilute to 1 liter. Calculate the exact Cl^- concentration using Equation 26–1.

$\mu g\ Cl^-/ml = g\ of\ NaCl \times 10^3 \times 35.453/58.44$ Eq. 26–1

In a similar manner, accurately weigh and solubilize 1.2 to 1.3 g of dried NaBr and 2.2 to 2.3 g of NaF to make 1-liter solutions. Use Equations 26–2 and 26–3 to calculate the Br^- and F^- concentrations.

$\mu g\ Br^-/ml = g\ of\ NaBr \times 10^3 \times 79.904/102.90$ Eq. 26–2

$\mu g\ F^-/ml = g\ of\ NaF \times 10^3 \times 18.998/41.99$ Eq. 26–3

Alternately, solutions containing a nominal certified concentration of 1000 mg/L NaCl are commercially available as convenient stock solutions from which standards can be made by appropriate volumetric dilution. Refrigerate the stock standard solutions and store no longer than one month.

* * * * *

4. * * *

4.1 * * *

4.1.1 Preparation of Collection Train. Prepare the sampling train as follows: Pour 15 ml of the acidic absorbing solution into each one of the first pair of impingers, and 15 ml of the alkaline absorbing solution into each one of the second pair of impingers. Connect the impingers in series with the knockout impinger first, if used, followed by the two impingers containing the acidic absorbing solution and the two impingers containing the alkaline absorbing solution. Place a fresh charge of silica gel, or equivalent, in the drying tube or impinger at the end of the impinger train.

* * * * *

4.2 Sample Recovery. Disconnect the impingers after sampling. Quantitatively transfer the contents of the acid impingers and the knockout impinger, if used, to a leak-free storage bottle. Add the water rinses of each of these impingers and connecting glassware to the storage bottle. Repeat this procedure for the alkaline impingers and connecting glassware using a separate storage bottle. The sample bottles should be sealed, shaken to mix, and labeled. Mark the fluid level.

4.3 Sample Preparation for Analysis. Note the liquid levels in the sample containers and confirm on the analysis sheet whether or not leakage occurred during transport. If a noticeable leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Quantitatively transfer the sample solutions to 100-ml volumetric flasks, and dilute to 100 ml with water.

4.4 * * *

4.4.2 Before sample analysis, establish a stable baseline. Next, inject a sample of water, and determine if any Cl^-, Br^-, or F^- appears in the chromatogram. If any of these ions are present, repeat the load/injection procedure until they are no longer present. Analysis of the acid and alkaline absorbing solution samples requires separate standard calibration curves; prepare each according to section 5.2. Ensure adequate baseline separation of the analytes.

4.4.3 Between injections of the appropriate series of calibration standards, inject in duplicate the reagent blanks, quality control sample, and the field samples. Measure the areas or heights of the Cl^-, Br^-, and F^- peaks. Use the average response to determine the concentrations of the field samples and reagent blanks using the linear calibration curve. The values from duplicate injections should agree within 5 percent of their mean for the analysis to be valid. Dilute any sample and the blank with equal volumes of water if the concentration exceeds that of the highest standard.

* * * * *

5. * * *

5.2 Ion Chromatograph. To prepare the calibration standards, dilute given amounts (1.0 ml or greater) of the stock standard solutions to convenient volumes, using 0.1 N H_2SO_4 or 0.1 N NaOH, as appropriate. Prepare at least four calibration standards for each absorbing reagent containing the appropriate stock solutions such that they are within the linear range of the field samples. Using one of the standards in each series, ensure adequate baseline separation for the peaks of interest. Inject the appropriate series of calibration standards, starting with the lowest concentration standard first both before and after injection of the quality control check sample, reagent blanks, and field samples. This allows compensation for any instrument drift occurring during sample analysis.

Determine the peak areas, or heights, for the standards and plot individual values versus halide ion concentrations in µg/ml. Draw a smooth curve through the points. Use linear regression to calculate a formula describing the resulting linear curve.

* * * * *

7. * * *

7.2 Total µg HCl, HBr, or HF Per Sample.

$m_{HX}=KV_s(S_{X^-}-B_{X^-})$ Eq. 26–4

where: B_{X^-}=Analysis of reagent blank, µg halide ion (Cl^-, Br^-, F^-)/ml.

m_{HX}=Mass of HCl, HBr, or HF in sample, µg.

S_{X^-}=Analysis of sample, µg halide ion (Cl^-, Br^-, F^-)/ml.

V_s=Volume of filtered and diluted sample, ml.

K_{HCl}=1.028 (µg HCl/µg-mole)/(µg Cl^-/µg-mole).

K_{HBr}=1.013 (µg HBr/µg-mole)/(µg Br^-/µg-mole).

K_{HF}=1.053 (µg HF/µg-mole)/(µg F^-/µg-mole).

7.3 Total µg Cl_2 or Br_2 Per Sample.

$m_{X2}=2\ V_s(S_{X^-}-B_{X^-})$ Eq. 26–5

where: m_{X2}=Mass of Cl_2 or Br_2 in sample, µg.

7.4 Concentration of Hydrogen Halide or Halogen in Flue Gas.

$C=K\ m_{HX,X2}/V_{m(std)}$ Eq. 26–6

where: C=Concentration of hydrogen halide (HX) or halogen (X_2), dry basis, mg/dscm.

$V_{m(std)}$=Dry gas volume measured by the dry gas meter, corrected to standard conditions, dscm.

$K=10^{-3}$ mg/µg.

8. * * *

4. Stern, D.A., B.M. Myatt, J.F. Lachowski, and K.T. McGregor. Speciation of Halogen and Hydrogen Halide Compounds in Gaseous Emissions. In: Incineration and Treatment of Hazardous Waste: Proceedings of the 9th Annual Research Symposium, Cincinnati, Ohio, May 2–4, 1983. Publication No.600/9–84–015. July 1984. Available from National Technical Information Service, Springfield, VA 22161 as PB84–234525.

5. Holm, R.D. and S.A. Barksdale. Analysis of Anions in Combustion Products. In: Ion Chromatographic Analysis of Environmental Pollutants. E. Sawicki, J.D. Mulik, and E. Wittgenstein (eds.). Ann Arbor, Michigan, Ann Arbor Science Publishers. 1978. pp. 99–110.

* * * * *

4. It is proposed that 40 CFR part 60 be amended by adding Method 26A to Appendix A as follows:

Appendix A—Test Methods

* * * * *

Method 26A—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources—Isokinetic Method

1. Applicability, Principle, Interferences, Precision, Bias, and Stability

1.1 Applicability. This method is applicable for determining emissions of hydrogen halides (HX) [hydrogen chloride (HCl), hydrogen bromide (HBr), and hydrogen fluoride (HF)] and halogens (X_2) [chlorine (Cl_2) and bromine (Br_2)] from stationary sources. This method collects the emission sample isokinetically and is therefore particularly suited for sampling at sources, such as those controlled by wet scrubbers, emitting acid particulate matter (e.g., hydrogen halides dissolved in water droplets). [Note: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.]

1.2 Principle. Gaseous and particulate pollutants are withdrawn isokinetically from the source and collected in an optional cyclone, on a filter, and in absorbing solutions. The cyclone collects any liquid droplets and is not necessary if the source emissions do not contain them; however, it is preferable to include the cyclone in the sampling train to protect the filter from any moisture present. The filter collects other particulate matter including halide salts. Acidic and alkaline absorbing solutions collect the gaseous hydrogen halides and halogens, respectively. Following sampling of emissions containing liquid droplets, any halides/halogens dissolved in the liquid in the cyclone and on the filter are vaporized to gas and collected in the impingers by pulling conditioned ambient air through the sampling train. The hydrogen halides are solubilized in the acidic solution and form chloride (Cl^-), bromide (Br^-), and fluoride (F^-) ions. The halogens have a very low solubility in the acidic solution and pass through to the alkaline solution where they are hydrolyzed to form a proton (H^+), the halide ion, and the hypohalous acid (HClO or HBrO). The halide ions in the separate solutions are measured by ion chromatography (IC). If desired, the particulate matter recovered from the filter and the probe is analyzed following the procedures in Method 5.

1.3 Interferences. Volatile materials, such as chlorine dioxide (ClO_2) and ammonium chloride (NH_4Cl), which produce halide ions upon dissolution during sampling are potential interferents. Interferents for the halide measurements are the halogen gases which disproportionate to a hydrogen halide and an hypohalous acid upon dissolution in water. The use of acidic rather than neutral or basic solutions for collection of the hydrogen halides greatly reduces the dissolution of any halogens passing through this solution. High concentrations of nitrogen oxides (NO_x) may produce sufficient nitrate (NO_3^-) to interfere with measurements of very low Br^- levels.

1.4 Precision and Bias. The method has a measurable negative bias below 20 ppm HCl. Similar bias for the other hydrogen halides is possible.

1.5 Sample Stability. The collected Cl^- samples can be stored for up to 4 weeks for analysis for HCl and Cl_2.

1.6 Detection Limit. The in-stack detection limit for HCl is approximately 0.02 µg per liter of stack gas; the analytical detection limit for HCl is 0.1 µg/ml. Detection limits for the other analytes should be similar.

2. Apparatus

2.1 Sampling. The sampling train is shown in Figure 26A–1; the apparatus is similar to the Method 5 train where noted as follows:

2.1.1 Probe Nozzle. Borosilicate or quartz glass; constructed and calibrated according to Method 5, sections 2.1.1 and 5.1, and coupled to the probe liner using a Teflon® union; a stainless steel nut is recommended for this union. When the stack temperature exceeds 210 °C (410 °F), a one-piece glass nozzle/liner assembly must be used.

2.1.2 Probe Liner. Same as Method 5, section 2.1.2, except metal liners shall not be used. Water-cooling of the stainless steel sheath is recommended at temperatures exceeding 500 °C.

2.1.3 Pitot Tube, Differential Pressure Gauge, Filter Heating System, Metering System, Barometer, Gas Density Determination Equipment. Same as Method 5, sections 2.1.3, 2.1.4, 2.1.6, 2.1.8, 2.1.9, and 2.1.10.

2.1.4 Cyclone (Optional). Glass. Use of the cyclone is required only when the sample gas stream is saturated with moisture; however, the cyclone is recommended to protect the filler from any moisture droplets present.

2.1.5 Filter Holder. Borosilicate glass, with a Teflon® filter support and a sealing gasket. The sealing gasket shall be constructed of Teflon® or equivalent materials. The holder design shall provide a positive seal against leakage at any point along the filter circumference. The holder shall be attached immediately to the outlet of the cyclone.

2.1.6 Impinger Train. The following system shall be used to determine the stack gas moisture content and to collect the hydrogen halides and halogens: five or six impingers connected in series with leak-free ground glass fittings or any similar leak-free noncontaminating fittings. The first impinger shown in Figure 26A–1 (knockout or condensate impinger) is optional and is recommended as a water knockout trap for use under high moisture conditions. If used, this impinger should be constructed as described below for the alkaline impingers, but with a shortened stem, and should contain 50 ml of 0.1 N H_2SO_4. The following two impingers (acid impingers which each contain 100 ml of 0.1 N H_2SO_4) shall be of the Greenburg-Smith design with the standard tip (Method 5, section 2.1.7). The next two impingers (alkaline impingers which each contain 100 ml of 0.1 N NaOH) and the last impinger (containing silica gel) shall be of the modified Greenburg-Smith design (Method 5, section 2.1.7). The condensate, acid, and alkaline impingers shall contain known quantities of the appropriate absorbing reagents. The last impinger shall contain a known weight of silica gel or equivalent desiccant.

2.1.7 Ambient Air Conditioning Tube (Optional). Tube tightly packed with approximately 150 g of fresh 8 to 20 mesh sodium hydroxide-coated silica, or equivalent, (Ascarite II® has been found suitable) to dry and remove acid gases from the ambient air used to remove moisture from the filter and cyclone, when the cyclone is used. The inlet and outlet ends of the tube should be packed with at least 1-cm thickness of glass wool or filter material suitable to prevent escape of fines. Fit one end with flexible tubing, etc. to allow connection to probe nozzle following the test run.

2.2 Sample Recovery. The following items are needed:

2.2.1 Probe-Liner and Probe-Nozzle Brushes, Wash Bottles, Glass Sample Storage Containers, Petri Dishes, Graduated Cylinder or Balance, and Rubber Policeman. Same as Method 5, sections 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5, and 2.2.7.

2.2.2 Plastic Storage Containers. Screw-cap polypropylene or polyethylene containers to store silica gel. High-density polyethylene bottles with Teflon screw cap liners to store impinger reagents, 1-liter.

2.2.3 Funnels. Glass or high-density polyethylene, to aid in sample recovery.

2.3 Analysis. For analysis, the following equipment is needed:

2.3.1 Volumetric Flasks. Class A, various sizes.

2.3.2 Volumetric Pipettes. Class A, assortment, to dilute samples to calibration range of the ion chromatograph (IC).

2.3.3 Ion Chromatograph. Suppressed or nonsuppressed, with a conductivity detector and electronic integrator operating in the peak area mode. Other detectors, a strip chart recorder, and peak heights may be used.

3. Reagents

Unless otherwise indicated, all reagents must conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society (ACS reagent grade). When such specifications are not available, the best available grade shall be used.

3.1 Sampling.

3.1.1 Water. Deionized, distilled water that conforms to American Society of Testing and Materials (ASTM) Specification D1193–77, Type 3.

3.1.2 Acidic Absorbing Solution, 0.1 N Sulfuric Acid (H_2SO_4). To prepare 1 L, slowly add 2.80 ml of concentrated H_2SO_4 to about 900 ml of water while stirring, and adjust the final volume to 1 L using additional water. Shake well to mix the solution.

3.1.3 Alkaline Absorbing Solution, 0.1 N Sodium Hydroxide (NaOH). To prepare 1 L, dissolve 4.00 g of solid NaOH in about 900 ml of water and adjust the final volume to 1 L using additional water. Shake well to mix the solution.

3.1.4 Filter. Quartz-fiber or Teflon® mat (e.g., Pallflex® TX40HI45) filter.

3.1.5 Silica Gel, Crushed Ice, and Stopcock Grease. Same as Method 5, sections 3.1.2, 3.1.4, and 3.1.5, respectively.

3.2 Sample Recovery.

3.2.1 Water. Same as Section 3.1.1.

3.2.2 Acetone. Same as Method 5, Section 3.2.

3.3 Sample Analysis.

3.3.1 Water. Same as section 3.1.1.

3.3.2 Reagent Blanks. A separate blank solution of each absorbing reagent should be prepared for analysis with the field samples. Dilute 200 ml of each absorbing solution (250 ml of the acidic absorbing solution, if a condensate impinger is used) to the same final volume as the field samples using the blank sample of rinse water. If a particulate determination is conducted, collect a blank sample of acetone.

3.3.3 Halide Salt Stock Standard Solutions. Prepare concentrated stock solutions from reagent grade sodium chloride (NaCl), sodium bromide (NaBr), and sodium fluoride (NaF). Each must be dried at 110 °C for 2 or more hours and then cooled to room temperature in a desiccator immediately before weighing. Accurately weigh 1.6 to 1.7 g of the dried NaCl to within 0.1 mg, dissolve in water, and dilute to 1 liter. Calculate the exact Cl^- concentration using Equation 26A–1.

$\mu g\ Cl^-/ml = g \text{ of } NaCl \times 10^3 \times 35.453/58.44$ Eq. 26A–1

In a similar manner, accurately weigh and solubilize 1.2 to 1.3 g of dried NaBr and 2.2 to 2.3 g of NaF to make 1-liter solutions. Use Equations 26A–2 and 26A–3 to calculate the Br^- and F^-concentrations.

$\mu g\ Br^-/ml = g \text{ of } NaBr \times 10^3 \times 79.904/102.90$ Eq. 26A–2

$\mu g\ F^-/ml = g \text{ of } NaF \times 10^3 \times 18.998/41.99$ Eq. 26A–3

Alternately, solutions containing a nominal certified concentration of 1000 mg/L NaCl are commercially available as convenient stock solutions from which standards can be made by appropriate volumetric dilution. Refrigerate the stock standard solutions and store no longer than 1 month.

3.3.4 Chromatographic Eluent. Effective eluents for nonsuppressed ion chromatography using a resin- or silica-based weak ion exchange column are a 4 mM potassium hydrogen phthalate solution, adjusted to a pH of 4.0 using a saturated sodium borate solution, and a mM 4-hydroxy benzoate solution, adjusted to a pH of 8.6 using 1 N sodium hydroxide. An effective eluent for suppressed ion chromatography is a solution containing 3 mM sodium bicarbonate and 2.4 mM sodium carbonate. Other dilute solutions buffered to a similar pH that contain no ions interfering with the chromatographic analysis may be used. If, when using suppressed ion chromatography, the "water dip" resulting from sample injection is interfering with the chlorine peak, use a 2 mM sodium hydroxide/2.4 mM sodium bicarbonate eluent.

4. Procedure

Because of the complexity of this method, testers and analysts should be trained and experienced with the procedures to ensure reliable results.

4.1 Sampling.

4.1.1 Pretest Preparation. Follow the general procedure given in Method 5, section 4.1.1, except the filter need only be desiccated and weighed if a particulate determination will be conducted.

4.1.2 Preliminary Determinations. Same as Method 5, section 4.1.2.

4.1.3 Preparation of Sampling Train. Follow the general procedure given in Method 5, section 4.1.3, except for the following variations:

Add 50 ml of 0.1 N H_2SO_4 to the condensate impinger, if used. Place 100 ml of 0.1 N H_2SO_4 in each of the next two impingers. Place 100 ml of 0.1 N NaOH in each of the following two impingers. Finally, transfer approximately 200–300 g of preweighed silica gel from its container to the last impinger. Set up the train as in Figure 26A–1. When used, the optional cyclone is inserted between the probe liner and filter holder and located in the heated filter box.

4.1.4 Leak-Check Procedures. Follow the leak-check procedures given in Method 5, sections 4.4.1 (Pretest Leak-Check), 4.1.4.2 (Leak-Checks During the Sample Run), and 4.1.4.3 (Post-Test Leak-Check).

4.1.5 Train Operation. Follow the general procedure given in Method 5, section 4.1.5. Maintain a temperature around the filter and (cyclone, if used) of 120±14 °C (248±25 °F). For each run, record the data required on a data sheet such as the one shown in Method 5, Figure 5–2. If the condensate impinger becomes too full, it may be emptied, recharged with 50 ml of 0.1 N H_2SO_4, and replaced during the sample run. The condensate emptied must be saved and included in the measurement of the volume of moisture collected and included in the sample for analysis. The additional 50 ml of absorbing reagent must also be considered in calculating the moisture. After the impinger is reinstalled in the train, conduct a leak-check as described in Method 5, section 4.1.4.2.

4.1.6 Post-Test Moisture Removal (Optional). When a cyclone is included in the sampling train, perform the following procedure. Upon completion of the test run, connect the ambient air conditioning tube at the probe inlet and operate the train with the filter heating system at 120±14 °C (248±25 °F) at a low flow rate (e.g., $\Delta H=1$ in. H_2O) to vaporize any liquid and hydrogen halides in the cyclone or on the filter and pull them through the train into the impingers. After 30 minutes, turn off the flow, remove the conditioning tube, and examine the cyclone and filter for any visible moisture. If moisture is visible, repeat this step for 15 minutes.

4.2 Sample Recovery. Allow the probe to cool. When the probe can be handled safely, wipe off all the external surfaces of the tip of the probe nozzle and place a cap loosely over the tip. Do not cap the probe tip tightly while the sampling train is cooling down because this will create a vacuum in the filter holder, drawing water from the impingers into the holder. Before moving the sampling train to the cleanup site, remove the probe, wipe off any silicone grease, and cap the open outlet of the impinger train, being careful not to lose any condensate that might be present. Wipe off any silicone grease and cap the filter or cyclone inlet. Remove the umbilical cord from the last impinger and cap the impinger. If a flexible line is used between the first impinger and the filter holder, disconnect it at the filter holder and let any condensed water drain into the first impinger. Wipe off any silicone grease and cap the filter holder outlet and the impinger inlet. Ground glass stoppers, plastic caps, serum caps, Teflon® tape, Parafilm®, or aluminum foil may be used to close these openings. Transfer the probe and filter/impinger assembly to the cleanup area. This area should be clean and protected from the weather to minimize sample contamination or loss. Inspect the train prior to and during disassembly and note any abnormal conditions. Treat samples as follows:

4.2.1 Container No. 1 (Optional; Filter Catch for Particulate Determination). Same as Method 5, section 4.2, Container No. 1.

4.2.2 Container No. 2 (Optional; Front-Half Rinse for Particulate Determination). Same as Method 5, section 4.2, Container No. 2.

4.2.3 Container No. 3 (Knockout and Acid Impinger Catch for Moisture and Hydrogen Halide Determination). Disconnect the impingers. Measure the liquid in the acid and knockout impingers to ±1 ml by using a graduated cylinder or by weighing it to ±0.5 g by using a balance. Record the volume or weight of liquid present. This information is required to calculate the moisture content of the effluent gas. Quantitatively transfer this liquid to a leak-free sample storage container. Rinse these impingers and connecting glassware (and tubing, if used) with water and add these rinses to the storage container Seal the container, shake to mix, and label. The fluid level should be marked so that if any sample is lost during transport, a correction proportional to the lost volume can be applied. Retain rinse water and acidic absorbing solution blanks and analyze with the samples.

4.2.4 Container No. 4 (Alkaline Impinger Catch for Halogen and Moisture Determination). Measure and record the liquid in the alkaline impingers as described in section 4.2.3. Quantitatively transfer this liquid to a leak-free sample storage container. Rinse these two impingers and connecting glassware with water and add these rinses to the container. Seal the container, shake to mix, and label; mark the fluid level. Retain alkaline absorbing solution blank and analyze with the samples.

4.2.5 Container No. 5 (Silica Gel for Moisture Determination). Same as Method 5, section 4.2, Container No. 3.

4.2.6 Container Nos. 6 through 9 (Reagent Blanks). Save portions of the absorbing reagents (0.1 N H_2SO_4 and 0.1 N NaOH) equivalent to the amount used in the sampling train; dilute to the approximate volume of the corresponding samples using rinse water directly from the wash bottle being used. Also, save a portion of the rinse water alone and a portion of the acetone equivalent to the amount used to rinse the front half of the sampling train. Place each in a separate, prelabeled sample container.

4.2.7 Prior to shipment, recheck all sample containers to ensure that the caps are well-secured. Seal the lids of all containers around the circumference with Teflon® tape. Ship all liquid samples upright and all particulate filters with the particulate catch facing upward.

4.3 Sample Preparation and Analysis. Note the liquid levels in the sample containers and confirm on the analysis sheet whether or not leakage occurred during transport. If a noticeable leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results.

4.3.1 Container Nos. 1 and 2 and Acetone Blank (Optional; Particulate Determination). Same as Method 5, section 4.3.

4.3.2 Container No. 5. Same as Method 5, section 4.3 for silica gel.

4.3.3 Container Nos. 3 and 4 and Absorbing Solution and Water Blanks. Quantitatively transfer each sample to a volumetric flask or graduated cylinder and dilute with water to a final volume within 50 ml of the largest sample.

4.3.3.1 The IC conditions will depend upon analytical column type and whether suppressed or nonsuppressed IC is used. Prior to calibration and sample analysis, establish a stable baseline. Next, inject a sample of water, and determine if any Cl^-, Br^-, or F^- appears in the chromatogram. If any of these ions are present, repeat the load/injection procedure until they are no longer present. Analysis of the acid and alkaline absorbing solution samples requires separate standard calibration curves; prepare each according to section 5.2. Ensure adequate baseline separation of the analytes.

4.3.3.2 Between injections of the appropriate series of calibration standards, inject in duplicate the reagent blanks and the field samples. Measure the areas or heights of the Cl^-, Br^- and F^- peaks. Use the average response to determine the concentrations of the field samples and reagent blanks using the linear calibration curve. If the values from duplicate injections are not within 5 percent of their mean, the duplicate injection shall be repeated and all four values used to determine the average response. Dilute any sample and the blank with equal volumes of water if the concentration exceeds that of the highest standard.

4.4 Audit Sample Analysis. Audit samples must be analyzed subject to availability.

5. Calibration

Maintain a laboratory log of all calibrations.

5.1 Probe Nozzle, Pitot Tube, Dry Gas Metering System, Probe Heater, Temperature Gauges, Leak-Check of Metering System, and Barometer. Same as Method 5, sections 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, and 5.7, respectively.

5.2 Ion Chromatograph. To prepare the calibration standards, dilute given amounts (1.0 ml or greater) of the stock standard solutions to convenient volumes, using 0.1 N H_2SO_4 or 0.1 N NaOH, as appropriate. Prepare at least four calibration standards for each absorbing reagent containing the three stock solutions such that they are within the linear range of the field samples. Using one of the standards in each series, ensure adequate baseline separation for the peaks of interest. Inject the appropriate series of calibration standards, starting with the lowest concentration standard first both before and after injection of the quality control check sample, reagent blanks, and field samples. This allows compensation for any instrument drift occurring during sample analysis. Determine the peak areas, or height, of the standards and plot individual values versus halide ion concentrations in µg/ml. Draw a smooth curve through the points. Use linear regression to calculate a formula describing the resulting linear curve.

6. Quality Control

Same as Method 5, Section 4.4.

7. Quality Assurance

7.1 Applicability. When the method is used to demonstrate compliance with a regulation, a set of two audit samples shall be analyzed.

7.2 Audit Procedure. The available audit samples are chloride solutions. Concurrently analyze the two audit samples and a set of compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation. The same analyst, analytical reagents, and analytical system shall be used both for compliance samples and the Environmental Protection Agency (EPA) audit samples.

7.3 Audit Sample Availability. Audit samples will be supplied only to enforcement agencies for compliance tests. Audit samples may be obtained by writing the Source Test Audit Coordinator (MD–77B), Quality Assurance Division, Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Laboratory, Research Triangle Park, NC 27711 or by calling the Source Test Audit Coordinator (STAC) at (919) 541–7834. The request for the audit samples should be made at least 30 days prior to the scheduled compliance sample analysis.

7.4 Audit Results. Calculate the concentrations in mg/dscm using the specified sample volume in the audit instructions. Include the results of both audit samples, their identification numbers, and the analyst's name with the results of the compliance determination samples in appropriate reports to the EPA regional office or the appropriate enforcement agency. (**NOTE**: Acceptability of results may be obtained immediately by reporting the audit results in mg/dscm and compliance results in total µg HCl/sample to the responsible enforcement agency.) The concentrations of the audit samples obtained by the analyst shall agree within 10 percent of the actual concentrations. If the 10 percent specification is not met, reanalyze the compliance samples and audit samples, and include initial and reanalysis values in the test report. Failure to meet the 10 percent specification may require retests until the audit problems are resolved.

8. Calculations

Retain at least one extra decimal figure beyond those contained in the available data in intermediate calculations, and round off only the final answer appropriately.

8.1 Nomenclature. Same as Method 5, section 6.1. In addition:

B_{x^-} = Analysis of reagent blank, µg halide ion (Cl^-, Br^-, F^-)/ml.
C = Concentration of hydrogen halide (HX) or halogen (X_2), dry basis, mg/dscm.
m_{HX} = Mass of HCl, HBr, or HF in sample, µg.
m_{X2} = Mass of C12 or Br2 in sample, µg.
S_{X-} = Analysis of sample, µg halide ion (Cl^-, Br^-, F^-)/ml.
V_s=Volume of filtered and diluted sample, ml.

8.2 Average Dry Gas Meter Temperature and Average Orifice Pressure Drop. See data sheet (Figure 5–2 of Method 5).

8.3 Dry Gas Volume. Calculate $V_{m(std)}$ and adjust for leakage, if necessary, using the equation in section 6.3 of Method 5.

8.4 Volume of Water Vapor and Moisture Content. Calculate the volume of water vapor $V_{w(std)}$ and moisture content B_{ws} from the data obtained in this method (Figure 5–2 of Method 5); use Equations 5–2 and 5–3 of Method 5.

8.5 Isokinetic Variation and Acceptable Results. Use Method 5, sections 6.11 and 6.12.

8.6 Acetone Blank Concentration, Acetone Wash Blank Residue Weight, Particulate Weight, and Particulate Concentration. For particulate determination.

8.7 Total µg HCl, HBr, or HF Per Sample.

$m_{HX}=K\ V_s\ (S_{X^-}-B_{X^-})$ Eq. 26A–4

where: K_{HCl}=1.028 (µg HCl/µg-mole)/(µg Cl^-/µg-mole).
K_{HBr}=1.013 (µg HBr/µg-mole)/(µg Br^-/µg-mole).
K_{HF}=1.053 (µg HF/µg-mole)/(µg F^-/µg-mole).

8.8 Total µg Cl_2 or Br_2 Per Sample.

$m_{X2}=2\ V_s\ (S_{X^-}-B_{X^-})$ Eq. 26A–5

8.9 Concentration of Hydrogen Halide or Halogen in Flue Gas.

$C=K\ m_{HX,X_2}/V_m(std)$ Eq. 26A–6

where: $K=10^{-3}$ mg/µg

8.10 Stack Gas Velocity and Volumetric Flow Rate. Calculate the average stack gas velocity and volumetric flow rate, if needed, using data obtained in this method and the equations in sections 5.2 and 5.3 of Method 2.

9. Bibliography

1. Steinsberger, S.C. and J.H. Margeson. Laboratory and Field Evaluation of a Methodology for Determination of Hydrogen Chloride Emissions from Municipal and Hazardous Waste Incinerators. U.S. Environmental Protection Agency, Office of Research and Development. Publication No. 600/3–89/064. April 1989. Available from National Technical Information Service, Springfield, VA 22161 as PB89220586/AS.

2. State of California Air Resources Board. Method 421—Determination of Hydrochloric Acid Emissions from Stationary Sources. March 18, 1987.

3. Cheney, J.L. and C.R. Fortune. Improvements in the Methodology for Measuring Hydrochloric Acid in Combustion Source Emissions. J. Environ. Sci. Health. *A19*(3): 337–350. 1984.

4. Stern, D.A., B.M. Myatt, J.F. Lachowski, and K.T. McGregor. Speciation of Halogen and Hydrogen Halide Compounds in Gaseous Emissions. In: Incineration and Treatment of Hazardous Waste: Proceedings of the 9th Annual Research Symposium, Cincinnati, Ohio, May 2–4, 1983. Publication No. 600/9–84–015. July 1984. Available from National Technical Information Service, Springfield, VA 22161 as PB84–234525.

5. Holm, R.D. and S.A. Barksdale. Analysis of Anions in Combustion Products. In: Ion Chromatographic Analysis of Environmental Pollutants, E. Sawicki, J.D. Mulik, and E. Wittgenstein (eds.). Ann Arbor, Michigan, Ann Arbor Science Publishers. 1978. pp. 99–110.

BILLING CODE 6560-50-M

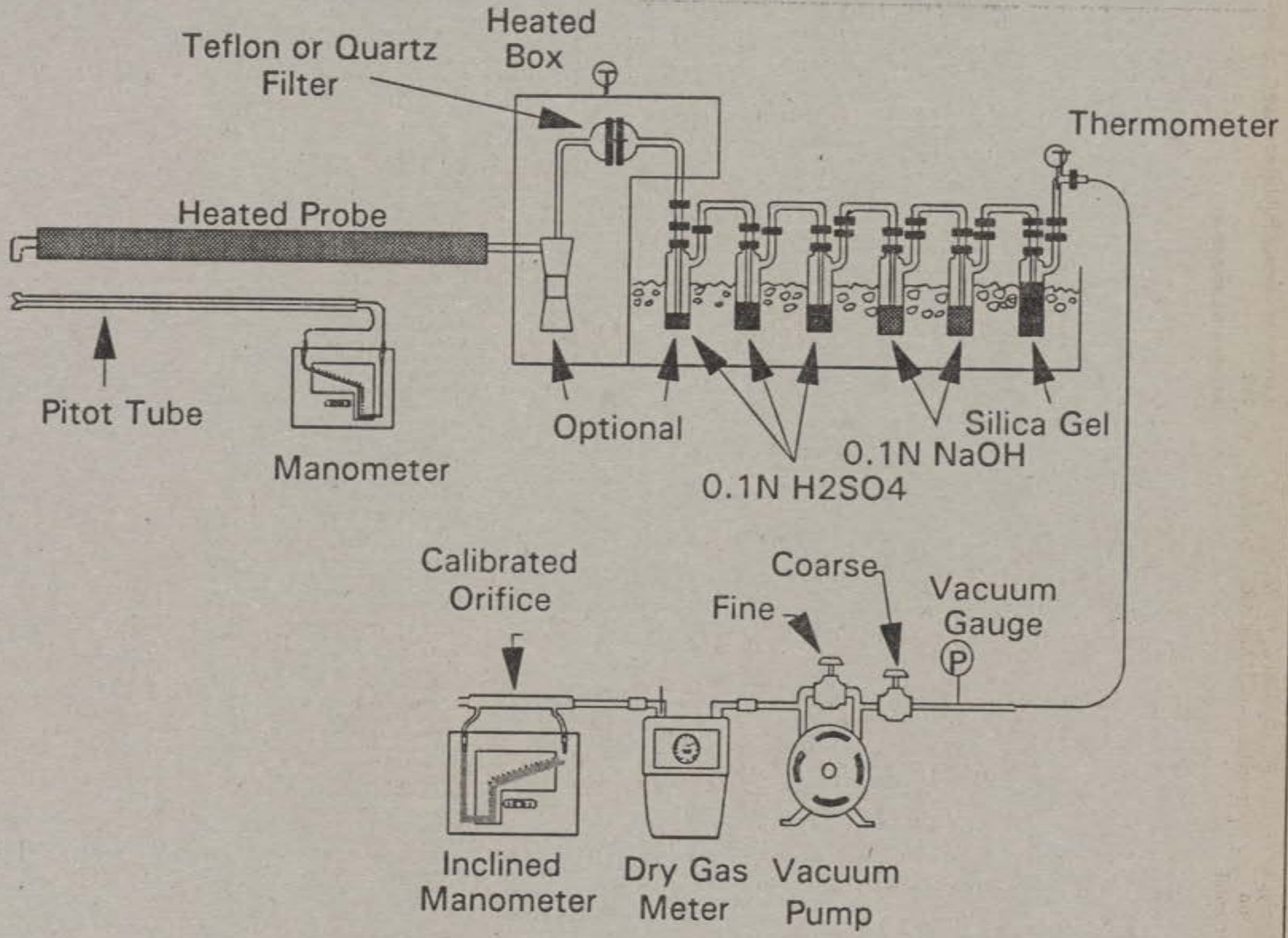

Figure 26A-1. Sampling train.

[FR Doc. 92-29293 Filed 12-30-92; 8:45 am]

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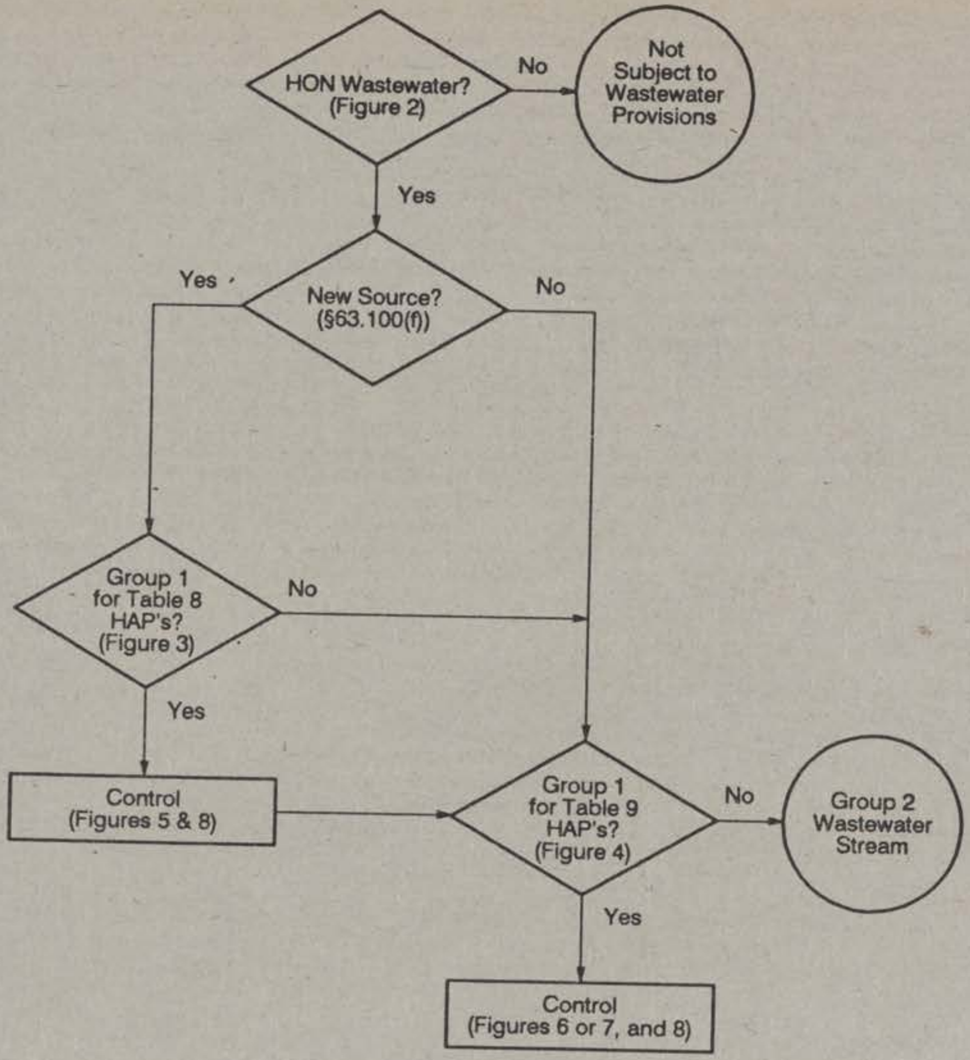

HON Wastewater? (Figure 2)
No
Not Subject to Wastewater Provisions
Yes
New Source? (§63.100(f))
Yes
No
Group 1 for Table 8 HAP's? (Figure 3)
No
Yes
Control (Figures 5 & 8)
Group 1 for Table 9 HAP's? (Figure 4)
No
Group 2 Wastewater Stream
Yes
Control (Figures 6 or 7, and 8)

Figure 1. Overview of HON Wastewater Provisions

7027990R

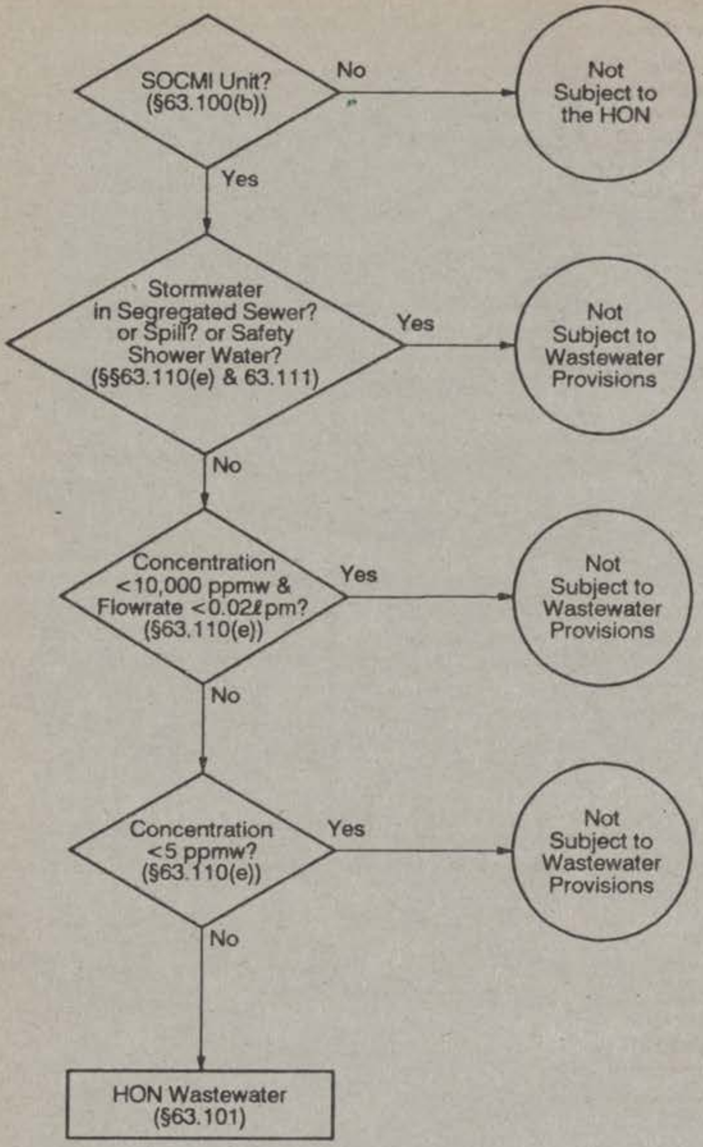
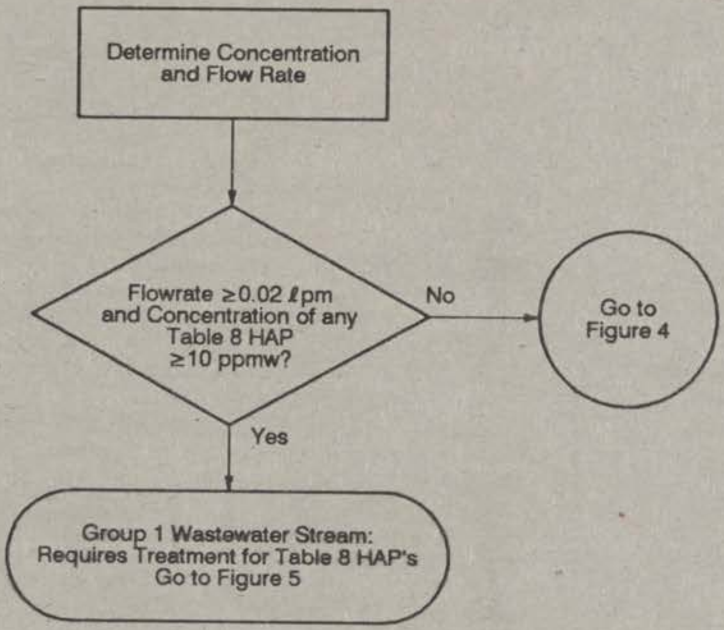

SOCMI Unit?
(§63.100(b))
No
Not Subject to the HON
Yes
Stormwater in Segregated Sewer? or Spill? or Safety Shower Water?
(§§63.110(e) & 63.111)
Yes
Not Subject to Wastewater Provisions
No
Concentration <10,000 ppmw & Flowrate <0.02ℓpm?
(§63.110(e))
Yes
Not Subject to Wastewater Provisions
No
Concentration <5 ppmw?
(§63.110(e))
Yes
Not Subject to Wastewater Provisions
No
HON Wastewater
(§63.101)

Figure 2. HON Wastewater Determination

7027991F



Do for each wastewater stream
generated from a process unit at a new source

Determine Concentration and Flow Rate
Flowrate ≥0.02 ℓpm and Concentration of any Table 8 HAP ≥10 ppmw?
No
Go to Figure 4
Yes
Group 1 Wastewater Stream: Requires Treatment for Table 8 HAP's Go to Figure 5

Figure 3. Group 1 and Group 2 Determinations for Wastewater Streams - Table 8 HAP's (Refer to §63.132(c))

70278925

Do for each wastewater stream

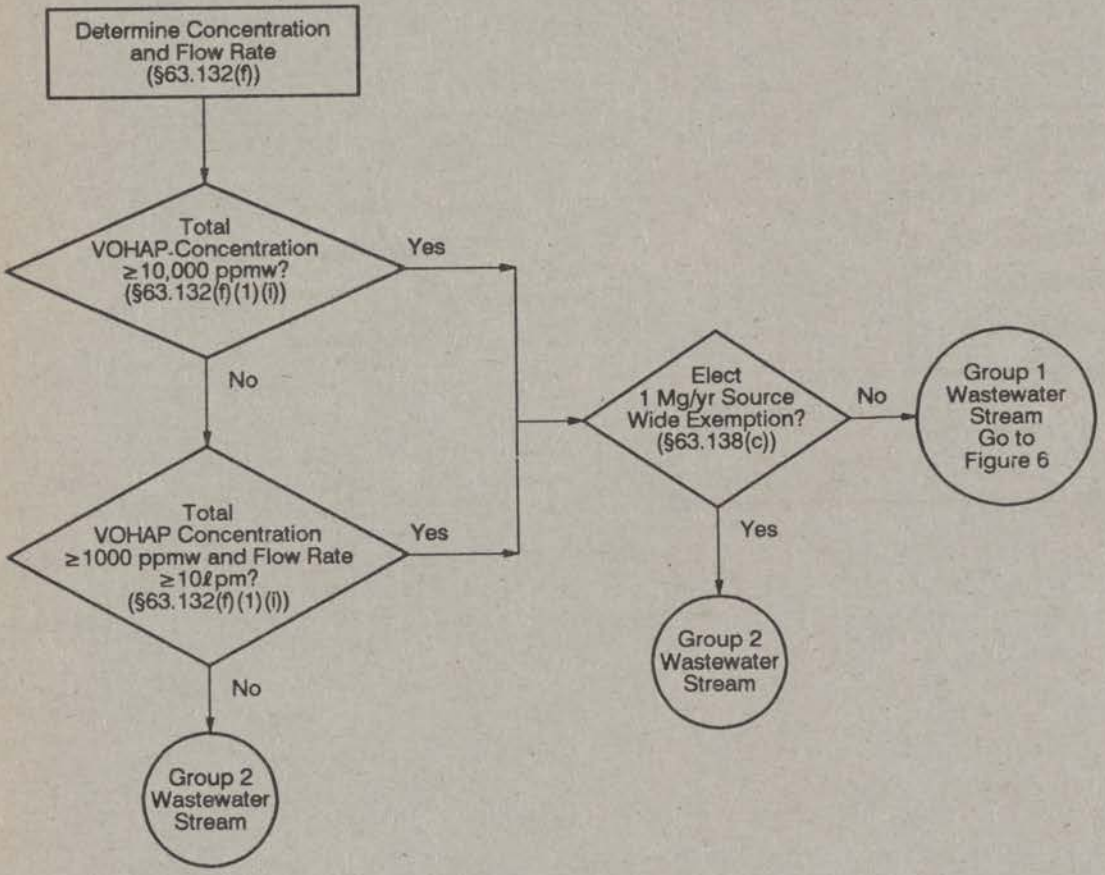

Determine Concentration and Flow Rate (§63.132(f))
Total VOHAP Concentration ≥10,000 ppmw? (§63.132(f)(1)(i))
Yes
No
Total VOHAP Concentration ≥1000 ppmw and Flow Rate ≥10ℓpm? (§63.132(f)(1)(i))
Yes
No
Group 2 Wastewater Stream
Elect 1 Mg/yr Source Wide Exemption? (§63.138(c))
No
Group 1 Wastewater Stream Go to Figure 6
Yes
Group 2 Wastewater Stream

Figure 4. Group 1 and Group 2 Determinations for Wastewater Streams - Table 9 HAP's (Refer to §§63.132(f) and 63.138(c))

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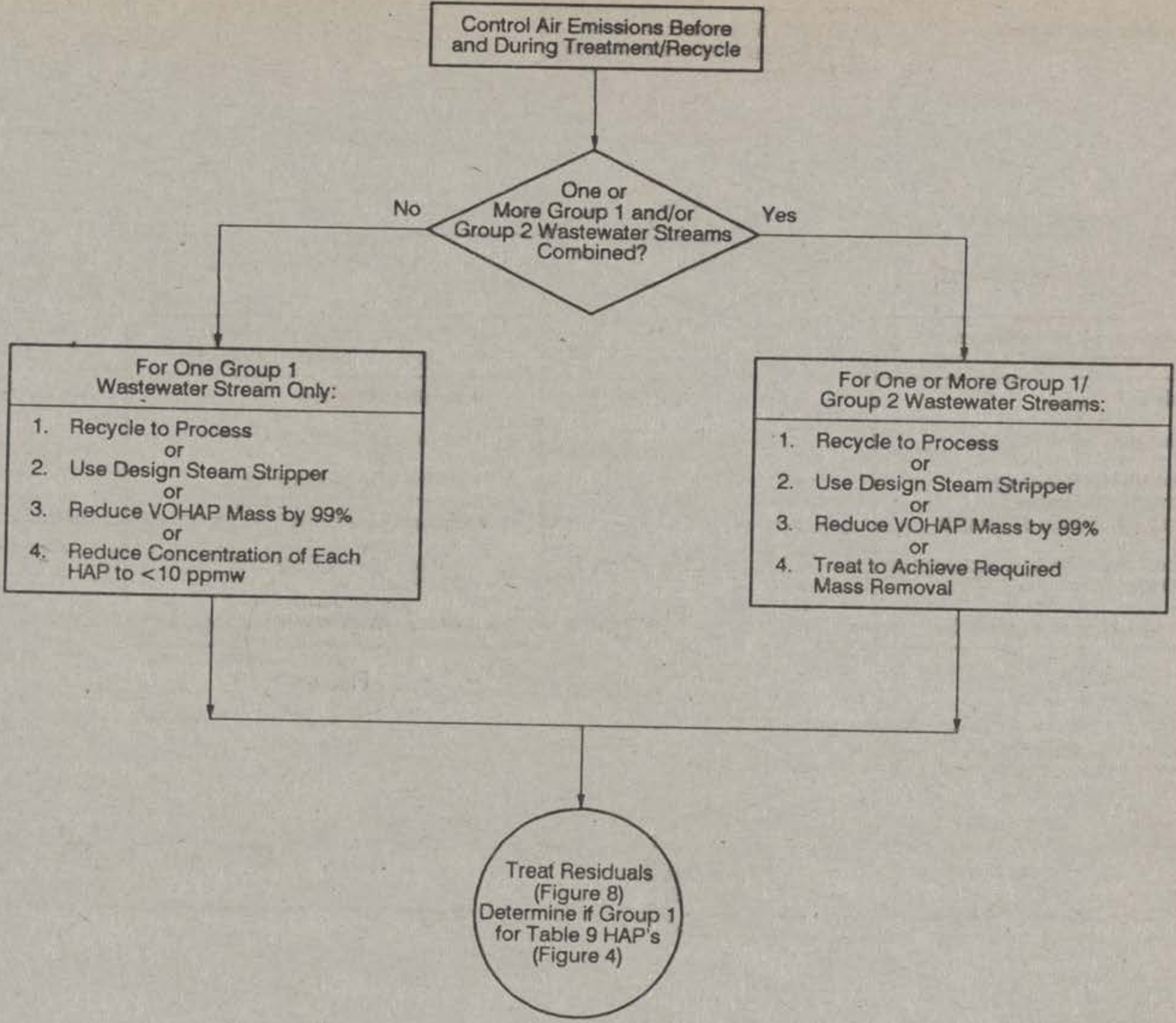
Control Air Emissions Before and During Treatment/Recycle
One or More Group 1 and/or Group 2 Wastewater Streams Combined?
No
Yes
For One Group 1 Wastewater Stream Only:
1. Recycle to Process
or
2. Use Design Steam Stripper
or
3. Reduce VOHAP Mass by 99%
or
4. Reduce Concentration of Each HAP to <10 ppmw
For One or More Group 1/ Group 2 Wastewater Streams:
1. Recycle to Process
or
2. Use Design Steam Stripper
or
3. Reduce VOHAP Mass by 99%
or
4. Treat to Achieve Required Mass Removal
Treat Residuals (Figure 8) Determine if Group 1 for Table 9 HAP's (Figure 4)

Figure 5. Compliance Options for Control of Table 8 HAP's
(Refer to §63.138(b))

7027994R

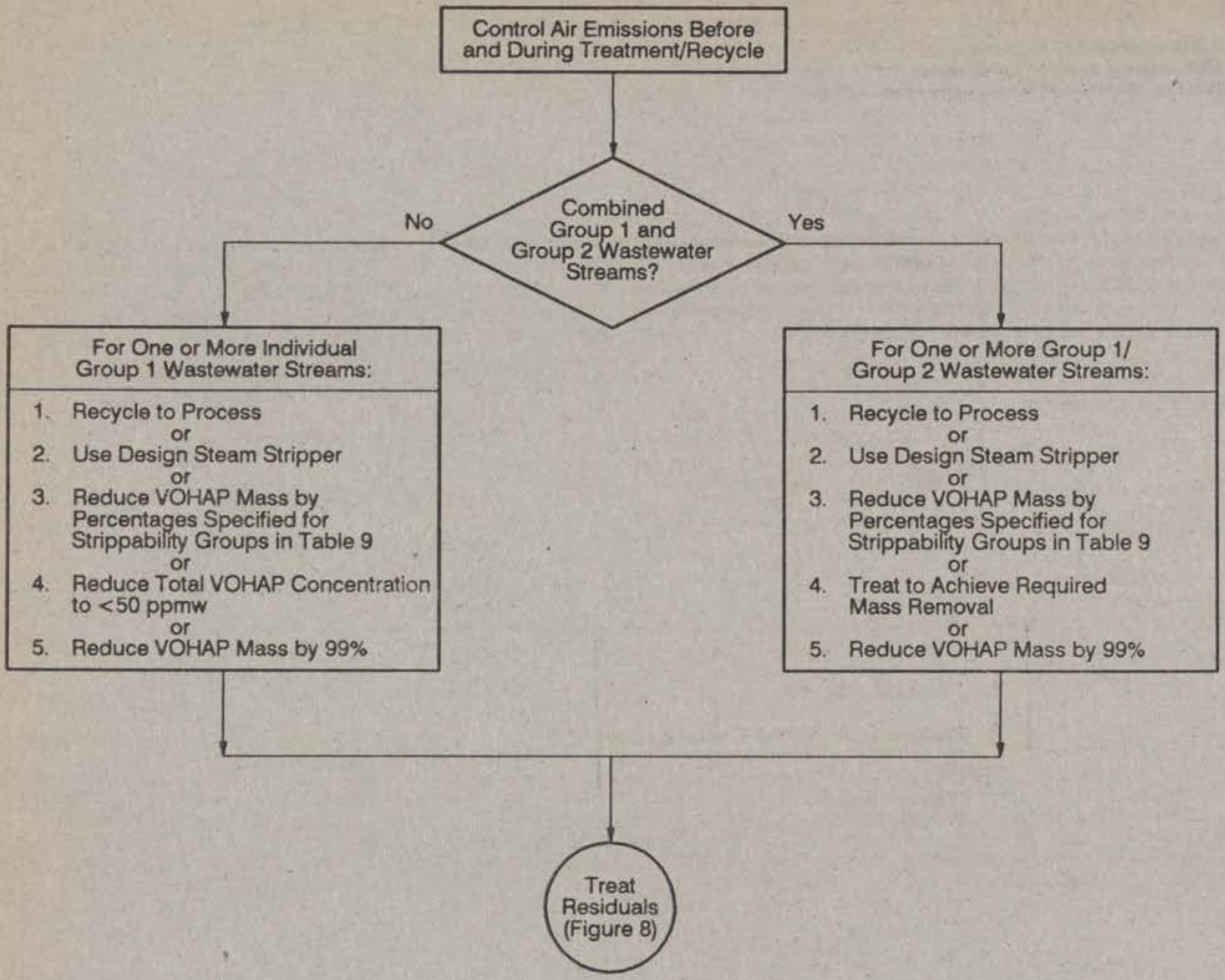
Control Air Emissions Before and During Treatment/Recycle
Combined Group 1 and Group 2 Wastewater Streams?
No
Yes
For One or More Individual Group 1 Wastewater Streams:
1. Recycle to Process
or
2. Use Design Steam Stripper
or
3. Reduce VOHAP Mass by Percentages Specified for Strippability Groups in Table 9
or
4. Reduce Total VOHAP Concentration to <50 ppmw
or
5. Reduce VOHAP Mass by 99%
For One or More Group 1/ Group 2 Wastewater Streams:
1. Recycle to Process
or
2. Use Design Steam Stripper
or
3. Reduce VOHAP Mass by Percentages Specified for Strippability Groups in Table 9
or
4. Treat to Achieve Required Mass Removal
or
5. Reduce VOHAP Mass by 99%
Treat Residuals (Figure 8)

Figure 6. Compliance Options for Control of Table 9 HAP's
(Refer to §63.138(c))

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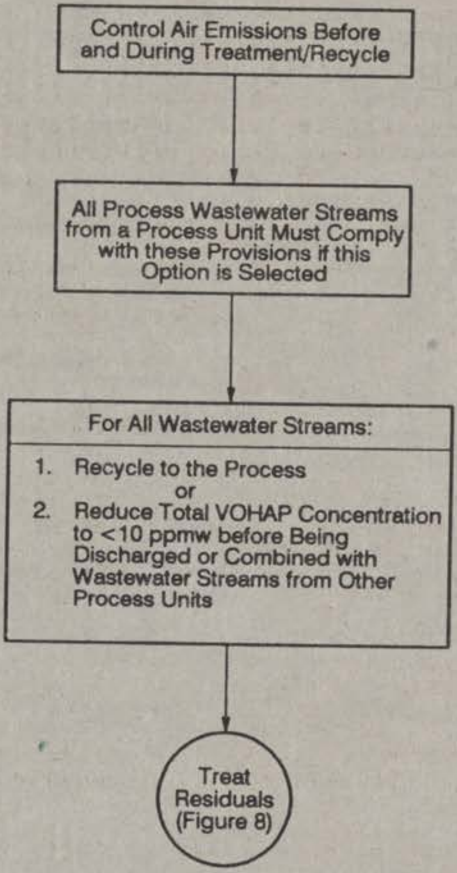
Control Air Emissions Before and During Treatment/Recycle
All Process Wastewater Streams from a Process Unit Must Comply with these Provisions if this Option is Selected
For All Wastewater Streams:
1. Recycle to the Process
or
2. Reduce Total VOHAP Concentration to <10 ppmw before Being Discharged or Combined with Wastewater Streams from Other Process Units
Treat Residuals (Figure 8)

For control of Table 9 HAP's only

Non-process wastewater streams and
wastewater streams from other process
units cannot be combined when using this option

Figure 7. Process Unit Alternative Compliance Option
(Refer to §63.138(d))

7027996R

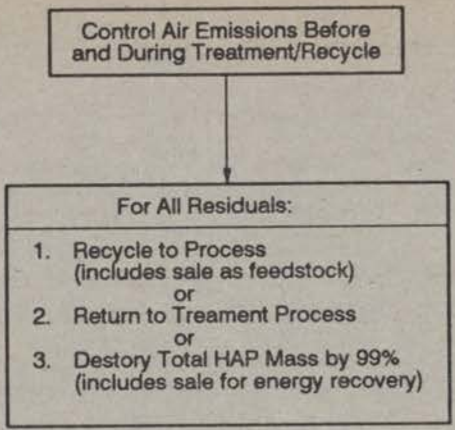
Control Air Emissions Before and During Treatment/Recycle
For All Residuals:
1. Recycle to Process (includes sale as feedstock)
or
2. Return to Treament Process
or
3. Destory Total HAP Mass by 99% (includes sale for energy recovery)

Figure 8. Compliance Options for Control of Residuals (Refer to §63.138(g))

7027997R

federal register

Thursday
December 31, 1992

Part III

Department of Health and Human Services

Public Health Service; Office of the Assistant Secretary for Health; Agency for Health Care Policy and Research; Substance Abuse and Mental Health Services Administration; Centers for Disease Control; Agency for Toxic Substances and Disease Registry; Indian Health Service; Health Resources and Services Administration; and Food and Drug Administration

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Privacy Act of 1974; Annual Publication of Systems of Records

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health

Privacy Act of 1974; Annual Publication of Systems of Records Notices

AGENCY: Public Health Service, HHS.

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Office of the Assistant Secretary for Health (OASH) in the Public Health Service (PHS) has reviewed its system notices and determined that there are no changes.

SUPPLEMENTARY INFORMATION: OASH has completed the annual review of its systems of records. Since the publication of December 24, 1991, OASH has made no changes to its inventory of systems of records that affect the public's right or need to know. A Table of Contents of active systems of records is published below. The complete text of the system notices was last published in the Office of the Federal Register's 1991 biennial Compilation of Privacy Act Issuances.

Dated: October 28, 1992.

Wilford J. Forbush,

Director, Office of Management.

Table of Contents

09–37–0001 Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM.
09–37–0002 PHS Commissioned Corps Personnel Records, HHS/OASH/OSG.
09–37–0003 PHS Commissioned Corps Medical Records, HHS/OASH/OSG.
09–37–0005 PHS Commissioned Corps Board Proceedings, HHS/OASH/OSG.
09–37–0006 PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files, HHS/OASH/OSG.
09–37–0008 PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OSG.
09–37–0017 Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM.
09–37–0020 Office of Minority Health Grants Records System, HHS/OASH/OMH.
09–37–0022 Records of Health Experts Maintained by the Office of International Health, HHS/OASH/OIH.

[FR Doc. 92–27100 Filed 12–30–92; 8:45 am]

BILLING CODE 4160–17–M

AGENCY FOR HEALTH CARE POLICY AND RESEARCH

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services (HHS); Public Health Service (PHS); Agency for Health Care Policy and Research (AHCPR).

ACTION: Annual Publication of Revisions to PHS Privacy Act System Notices.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) is publishing this notice in accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," which requires that agencies review each system of records annually and publish any minor changes in the **Federal Register**.

The AHCPR has completed the annual review of its systems of records and is publishing below (1) a table of contents which lists all active systems of records in AHCPR, and (2) those minor changes which affect the public's right or need to know, such as changes in the system location of records or the address of system managers.

Dated: October 28, 1992.

J. Jarrett Clinton,

Administrator.

Table of Contents

09–35–0001 Grants Records System, HHS/AHCPR/OM
09–35–0002 National Medical Expenditure Survey, HHS/AHCPR/CGHSIR
09–35–0003 AIDS Cost and Service Utilization Survey (ACSUS), HHS/AHCPR/CGHSER
09–35–0004 Medical Treatment Effectiveness Program (MEDTEP) Research, HHS/AHCPR/CMER

09–35–0002

SYSTEM NAME:

National Medical Expenditure Survey, HHS/AHCPR/CGHSIR.

Minor changes have been made to this system notice. The following categories should be revised:

Replace entire section as follows:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals and members of households selected by probability sampling techniques to be representative of the civilian noninstitutionalized population of the United States; health care providers, staff responding on behalf of health insurers and the employers of members of sampled households; (2) residents and next-of-kin of such residents of nursing and personal care homes, and facilities for the mentally retarded selected by probability sampling techniques to be representative of residents of such homes, hospitals and facilities and the staff responding on behalf of such facilities.

Replace entire section as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing information on: (1) The incidence of illness and accidental injuries, prevalence of diseases and impairments, the extent of disability, the use, expenditures and sources of payment for health care services, and other characteristics of individuals obtained in household interviews (demographic and socioeconomic characteristics such as age, marital status, education, occupation and family income) and the names, telephone numbers and addresses of the responding staffs of health care providers, health insurers, and employers; (2) the utilization of long-term care, nursing home care, care in personal care homes and care in facilities for the mentally retarded through data on residents (demographic and social characteristics, health status and charges and sources of payment for care); through data facility characteristics (general characteristics, certification, services offered and corresponding expenses), and through data on next-of-kin or representatives of residents (demographic and social characteristics, health status, and expenditures for health care of residents); and (3) Medicare claims records of members of sampled households and of sampled residents of nursing and personal care homes, and facilities for the mentally retarded.

Replace entire section as follows:

RECORD SOURCE CATEGORIES:

Respondents in the survey samples including: Members of households, physicians, hospitals, health insurers, employers, staff of nursing and personal care homes, and staff of facilities for the mentally retarded; the next-of-kin of residents of such homes, facilities and hospitals; and System 09–70–0005, Medicare Bill File (Statistics), HHS/HCFA/BDMS.

[FR Doc. 92–26786 Filed 12–30–92; 8:45 am]

BILLING CODE 4160–90–M

Substance Abuse and Mental Health Services Administration

Privacy Act of 1974: Annual Publication of Systems of Records

AGENCY: Public Health Service, DHHS.

ACTION: Privacy Act: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with the Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records about Individuals," the Substance Abuse and Mental Health Services Administration (SAMHSA) has reviewed its systems of records notices. SAMHSA is publishing the changes that are the result of the Alcohol, Drug Abuse, and Mental Services Administration (ADAMHA) being reorganized into SAMHSA.

SUPPLEMENTARY INFORMATION: On October 1, 1992, ADAMHA was reorganized into SAMHSA as mandated by the ADAMHA Reorganization Act of 1992, Public Law 102–321. As required by law, SAMHSA consists of the Office of the Administrator and three Centers, which administer the prevention and treatment services programs formerly in ADAMHA—the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services. The research Institutes formerly at ADAMHA—the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health—became components of the National Institutes of Health. The list of title changes is shown below.

A. The following is a list of active SAMHSA systems of records notices:

09–30–0023 Records of Contracts Awarded to Individuals, HHS/SAMHSA/OA; published **Federal Register**, Vol. 49, No. 106, p. 22713.

09–30–0027 Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Fellowship, Clinical Training, Community Services, HHS/SAMHSA/OA; published **Federal Register**, Vol. 49, No. 106, p. 22714.

09–30–0029 Records of Guest Workers, HHS/SAMHSA/OA; published **Federal Register**, Vol. 48, No. 230, p. 53823.

09–30–0033 Correspondence Files, HHS/SAMHSA/OA; published **Federal Register**, Vol. 48, No. 230, p. 53825.

09–30–0036 Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometric Research Data HHS/SAMHSA/OA; published **Federal Register**, Vol. 49, No. 206, p. 42639.

09–30–0047 Patient Records on Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky, (1942 to Present), HHS/ADAMHA/NIMH; published **Federal Register**, Vol. 51, No. 226, p. 42395.

09–30–0049 Consultant Records Maintained by ADAMHA Contractors, HHS/SAMHSA/OA; published **Federal Register**, Vol. 52, No. 195, p. 37660.

B. The following is a list of ADAMHA systems of records notices which have been deleted:

09–30–0004 Intramural Research Program Records of Research Performed on In- and Out-Patients with Various Types of Mental Illness, HHS/ADAMHA/NIMH; published **Federal Register**, Vol. 48, No. 230, p. 53798.

09–30–0020 Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1978), HHS/ADAMHA/NIDA; published **Federal Register**, Vol. 49, No. 244, p. 49181.

09–30–0022 National Institute on Drug Abuse, Addiction Research Center, Federal Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA; published **Federal Register**, Vol. 48, No. 230; p. 53816.

09–30–0030 Records of Visiting Fellows, HHS/ADAMHA/OA; published **Federal Register**, Vol. 48, No. 230, p. 53824.

09–30–0035 Three Mile Island Mental Health Survey Respondents Records, HHS/ADAMHA/NIMH; published **Federal Register**, Vol. 47, No. 198, p. 45459.

09–30–0037 Psychotherapy of Opiate-Dependent Individuals, HHS/ADAMHA/NIDA; published **Federal Register**, Vol. 48, No. 230, p. 53828.

09–30–0038 Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse, HHS/ADAMHA/NIDA; published **Federal Register**, Vol. 48, No. 230, p. 53829.

09–30–0039 Drug Abuse Treatment Outcome Study (DATOS) HHS/ADAMHA/NIDA; published **Federal Register**, Vol. 48, No. 230, p. 53830 and **Federal Register**, Vol. 54, No. 221, p. 47865.

09–30–0041 Subject-Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMHA/NIDA; published **Federal Register**, Vol. 48, No. 112, p. 26672.

09–30–0043 Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/ADAMHA/NIDA; published **Federal Register**, Vol. 48, No. 230, p. 53832.

09–30–0048 Intramural Research Program Records of In- and Out-Patients With Various Types of Alcohol Abuse and Dependence, Relatives of Patients With Alcoholism, and Healthy Volunteers, HHS/ADAMHA/NIAAA; published **Federal Register**, Vol. 51, No. 226, p. 42396.

09–30–0050 Clinical Research: Patient Medical Records, HHS/ADAMHA/NIMH; published **Federal Register**, Vol. 53, No. 81, p. 15142.

Readers who notice any errors or omissions in the SAMHSA systems of records notices are invited to bring them to my attention at the following address: Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 12–105, Rockville, Maryland 20857.

Dated: November 2, 1992.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 92–27614 Filed 12–30–92; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Privacy Act of 1974: Annual Publication of Systems of Records

AGENCY: Centers for Disease Control, HHS.

ACTION: Publication of minor changes to notices of systems of records.

SUMMARY: In accordance with the Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Centers for Disease Control (CDC) is publishing the table of contents and minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: CDC has completed the annual review of its systems of records and is publishing below the table of contents and those minor changes which affect the public's right or need to know, such as clarifications of categories of individuals and categories of records covered by systems, storage, retention, retrievability, record sources, and purpose sections, changes in the system location of records, or the designation and address of system managers.

I. Table of Contents

A. The following CDC active systems of records were last published in the **Federal Register**, 51 FR 42449, November 24, 1986:

09–20–0000 Cooperative Mycoses Study, HHS/CDC/NCID.

09–20–0001 Certifying Interpreting Physician File, HHS/CDC/NIOSH.

09–20–0055 Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications, HHS/CDC/PGO.

09–20–0059 Division of Training Mailing List, HHS/CDC/NIOSH.

09–20–0089 Studies of Treatment of Tuberculosis and Other Mycobacterioses, HHS/CDC/NCPS.

09–20–0090 Studies of Testing for Tuberculosis and Other Mycobacterioses, HHS/CDC/NCPS.

09–20–0096 Records of Tuskegee Study Health Benefit Recipients, HHS/CDC/NCPS.

09–20–0102 Alien Mental Waiver Program, HHS/CDC/NCPS.

09–20–0103 Alien Tuberculosis Follow-up Program, HHS/CDC/NCPS.

09–20–0106 Specimen Handling for Testing and Related Data, HHS/CDC/NCID.
09–20–0112 Fellowship Program and Guest Researcher Records, HHS/CDC/PMO.
09–20–0113 Epidemic Investigation Case Records, HHS/CDC/NCID.
09–20–0117 Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies, HHS/CDC/NIOSH.
09–20–0118 Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist, HHS/CDC/NIOSH.
09–20–0136 Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID.
09–20–0137 Passport File, HHS/CDC/IHPO.
09–20–0138 Epidemic Intelligence Service Officers Files, HHS/CDC/EPO.
09–20–0147 Occupational Health Epidemiological Studies, HHS/CDC/NIOSH.
09–20–0149 Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH.
09–20–0153 Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH.
09–20–0154 Medical and Laboratory Studies, HHS/CDC/NIOSH.
09–20–0157 Clinical Laboratory Personnel Proficiency Test Results (Medicare), HHS/CDC/PHPPO.
09–20–0159 Records of Subjects in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations, HHS/CDC/NIOSH.
09–20–0160 Records of Subjects in Health Promotion and Education Studies, HHS/CDC/NCCDPHP.
09–20–0161 Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/NCPS.
09–20–0162 Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/NCEH.

B. The following active CDC systems were last published in the **Federal Register**, 51 FR 42368, November 24, 1986:

09–20–0163 Applicants for National Center for Health Statistics Technical Assistance, HHS/CDC/NCHS. (Formerly numbered 09–37–0009.)
09–20–0168 Curricula Vitae of Consultants to the National Center for Health Statistics, HHS/CDC/NCHS. (Formerly numbered 09–37–0014.)
09–20–0169 Users of Health Statistics, HHS/CDC/NCHS. (Formerly numbered 09–37–0016.)

C. The following CDC active systems were last published in the **Federal Register**, 49 FR 37692, September 25, 1984:

09–20–0164 Health and Demographic Surveys Conducted in Probability Samples of the United States Population, HHS/CDC/NCHS. (Formerly numbered 09–37–0010.)
09–20–0165 Health Manpower Inventories and Surveys, HHS/CDC/NCHS. (Formerly numbered 09–37–0011.)
09–20–0166 Vital Statistics for Births, Deaths, Fetal Deaths, Marriages, and Divorces Occurring in the United States During Each Year, HHS/CDC/NCHS. (Formerly numbered 09–37–0012.)
09–20–0167 Health Resources Utilization Statistics, HHS/CDC/NCHS. (Formerly numbered 09–37–0013.)

2. On June 25, 1992, the Secretary, Health and Human Services, approved the establishment of the National Center for Injury Prevention and Control and the title change for the National Center for Environmental Health and Injury Control (NCEHIC) to the National Center for Environmental Health. Establishment of the new Center helps provide recognition of the magnitude of the injury problem and demonstrates CDC's commitment to one of the Nation's most important public health problems. The transfer of injury responsibilities from NCEHIC required a title change for NCEHIC to the National Center for Environmental Health.

These new organizational titles represent minor changes in the system name, system location, and system manager and address categories of the following systems: 09–20–0113, 09–20–0136, and 09–20–0162. The next comprehensive republication of notices will describe all of CDC's systems in their entirety.

3. System 09–20–0136 is published in its entirety below to incorporate in one document a number of previous revisions, including those relating to safeguards, new organizations, new titles, and to reflect current office locations.

09–20–0136

SYSTEM NAME:

Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

San Juan Laboratories, National Center for Infectious Diseases, Centers for Disease Control, San Juan, Puerto Rico 00936.

National Center for Prevention Services, 1600 Freeway Park, Rm. 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

National Center for Environmental Health, Chamblee Bldg. 101, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

National Center for Injury Prevention and Control, Koger Davidson Building, Rm. 2037, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Public Health Practice Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

National Center for Chronic Disease Prevention and Health Promotion, Rhodes Bldg., Rm. 4004, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children with diseases and other preventable conditions of public health significance; also included are control group participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case reports, medical records, questionnaires, and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, section 301, "Research and Investigation," (42 U.S.C. 241); sections 304, 306 and 308(d) which discuss authority to grant assurances of confidentiality for health research and related activities (42 U.S.C. 242 b, k, and m(d)).

PURPOSE(S):

This record system enables Centers for Disease Control (CDC) officials to better understand disease patterns in the United States, develop programs for prevention and control of health problems, and communicate new knowledge to the health community.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

CDC is under contract with private firms for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records are maintained by such contractors. Contractors are required to maintain Privacy Act safeguards with respect to such records.

The following routine uses apply to all records in this system except those maintained under an assurance of confidentiality provided by section 308(d) of the Public Health Service Act (unless expressly authorized in the consent form or stipulated in the Assurance Statement):

A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identified form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

Records may be disclosed to health departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes/disks and printouts and file folders.

RETRIEVABILITY:

By name of individual and by identification number.

SAFEGUARDS:

1. *Authorized Users:* A database security package is implemented on CDC's mainframe computer to control unauthorized access to the system. Attempts to gain access by unauthorized individuals are automatically recorded and reviewed on a regular basis. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical Safeguards:* Access to the CDC Clifton Road facility where the mainframe computer is located is controlled by a card key system, with access to the computer room controlled by a card key and security code (numeric keypad) system. Access to the data entry area is also controlled by a card key system and the hard copy records are kept in locked cabinets in locked rooms. The local fire department is located directly across the street from the CDC Clifton Road facility. The computer room is protected by a dry pipe fire protection system, numerous automatic sensors (e.g., water, heat, smoke, etc.) are installed, and a proper mix of portable fire extinguishers are located throughout the computer room. The system is backed up on a nightly basis with copies of the files stored off site in a secure fire proof safe. Guard service in buildings provides personnel screening of visitors. Electronic anti-intrusion devices are in effect at the Federal Records Center.

3. *Procedural Safeguards:* System security includes automatic suspension of accounts, forced password changes, and control of systems and data set access. Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. When Privacy Act tapes are scratched, a special "certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45–13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management

Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Record copy of study reports are maintained in agency from two to three years in accordance with retention schedules. Source documents for computer are disposed of when no longer needed by program officials. Personal identifiers may be deleted from records when no longer needed in the study as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records are destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Infectious Diseases, Bldg. 1, Rm. 6013, MS C12, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, National Center for Prevention Services, 1600 Freeway Park Rm. 313, MS E07, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, National Center for Environmental Health, Chamblee Bldg. 101, Rm. 2115, MS F29, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

Director, National Center for Injury Prevention and Control, Koger Davidson Bldg., Rm. 2037, MS F36, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

Director, Epidemiology Program Office, Bldg. 1, Rm. 5009, MS C08, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Public Health Practice Program Office, 24 Executive Park, Rm. 110, MS E20, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, National Center for Chronic Disease Prevention and Health Promotion, Rhodes Bldg., Rm. 4004, MS K40, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, MS D15, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself or may obtain information concerning participation in epidemiological studies or surveillance activities by contacting the appropriate system manager at the address listed above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the first official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals, private physicians, State and local health departments, and other health care providers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

4. The following systems are amended to reflect changes in the system location of records or the system manager and address category:

09–20–0001

SYSTEM NAME:

Certifying Interpreting Physician File, HHS/CDC/NIOSH. Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505–2888.

Data are also occasionally located at contractor sites as studies are developed, data collected, and reports written. A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

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SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505–2888.

Chief, Examinations Processing Branch, DRDS, NIOSH, Receiving Center, Post Office Box 4258, Morgantown, WV 26504–4258.

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09–20–0055

SYSTEM NAME:

Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications, HHS/CDC/PGO.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

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SYSTEM LOCATION:

Division of Research Grants, National Institutes of Health (NIH), Westbard Bldg., Westbard Avenue, Bethesda, MD 20014.

Grants Management Office, Procurement and Grants Office, Rm. 300, Buckhead Bldg., Centers for Disease Control, 1600 Clifton Road, NE, Atlanta, GA 30333.

Grants Program Activity, Office of the Director, National Institute for Occupational Safety and Health (NIOSH), Bldg. 1, Rm. 3053, Centers for Disease Control, 1600 Clifton Road, NE, Atlanta, GA 30333.

Division of Training and Manpower Development, Division of Biomedical and Behavioral Science, Division of Physical Sciences and Engineering, and Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, 4676 Columbia Parkway, Cincinnati, OH 45226.

Division of Respiratory Disease Studies and Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, WV 26505–2888 and

Federal Records Center, 4205 Suitland Road, Suitland, MD 20409, and 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Data are also occasionally located at grantee sites as studies are developed, data collected, and reports written. A list of grantee sites where individually identifiable data are currently located is available upon request to the system manager.

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09–20–0102

SYSTEM NAME:

Alien Mental Waiver Program, HHS/CDC/NCPS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

Medical Screening Section, Division of Quarantine, National Center for Prevention Services, 1644 Freeway Office Park, Room 1330, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333 and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Quarantine, National Center for Prevention Services, 1644 Freeway Office Park, Rm. 1328, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

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09–20–0103

SYSTEM NAME:

Alien Tuberculosis Follow-up Program, HHS/CDC/NCPS.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Quarantine, National Center for Prevention Services, 1644 Freeway Office Park, Rm. 1328, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

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09–20–0112

SYSTEM NAME:

Fellowship Program and Guest Researcher Records, HHS/CDC/PMO.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

Personnel Management Office, Bldg. 1, Rm. 1070, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, General Personnel Services Branch, Personnel Management Office, Bldg. 1, Rm. 1407, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

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09–20–0113

SYSTEM NAME:

Epidemic Investigation Case Records, HHS/CDC/NCID.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

National Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

National Center for Prevention Services, 1600 Freeway Park, Rm. 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

National Center for Environmental Health, Chamblee Bldg. 101, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

National Center for Injury Prevention and Control, Koger Davidson Building, Rm. 2037, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Infectious Diseases, Bldg. 1, Rm. 6013, MS C12, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Epidemiology Program Office, Bldg. 1, Rm. 5009, MS C08, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, National Center for Prevention Services, 1600 Freeway Park, Rm. 313, MS E07, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, National Center for Environmental Health, Chamblee Bldg. 101, Rm. 2115, MS F29, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

Director, National Center for Injury Prevention and Control, Koger Davidson Bldg., Rm. 2037, MS F36, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, MS D15, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

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09–20–0149

SYSTEM NAME:

Morbidity Studies in Coal Mining, Metal, and Non-metal Mining and General Industry, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505–2888.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

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SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944

Chestnut Ridge Road, Morgantown, WV 26505–2888.

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09–20–0153

SYSTEM NAME:

Mortality Studies in Coal Mining, Metal, and Non-metal Mining and General Industry, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505–2888.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

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SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505–2888.

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09–20–0154

SYSTEM NAME:

Medical and Laboratory Studies, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505–2888.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

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SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505–2888.

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09–20–0159

SYSTEM NAME:

Records of Subjects in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

Division of Safety Research (DSR), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505–2888.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

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SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Division of Safety Research (DSR), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505–2888.

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09–20–0162

SYSTEM NAME:

Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/CEH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

National Center for Environmental Health, Chamblee Bldg. 101, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Data are located at contractor sites as data are collected. A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Agent Orange Projects, National Center for Environmental Health, Chamblee Bldg. 101, Centers for Disease Control, 4770 Buford Highway NE, Atlanta, GA 30341–3724.

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09–20–0165

SYSTEM NAME:

Health Manpower Inventories and Surveys, HHS/CDC/NCHS.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

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SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Centers for Disease Control, Presidential Building, Rm. 1140, 6525 Belcrest Road, Hyattsville, MD 20782.

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09–20–0166

SYSTEM NAME:

Vital Statistics for Births, Deaths, Fetal Deaths, Marriages, and Divorces Occurring in the United States During Each Year, HHS/CDC/NCHS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

National Center for Health Statistics, Centers for Disease Control, Presidential Building, Rm. 1140, 6525 Belcrest Road, Hyattsville, MD 20782.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Centers for Disease Control, Presidential Building, Rm. 1140, 6525 Belcrest Road, Hyattsville, MD 20782.

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09–20–0167

SYSTEM NAME:

Health Resources Utilization Statistics, HHS/CDC/NCHS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Center for Health Statistics, Centers for Disease Control, Presidential Building, Rm. 1140, 6525 Belcrest Road, Hyattsville, MD 20782.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Centers for Disease Control, Presidential Building, Rm. 1140, 6525 Belcrest Road, Hyattsville, MD 20782.

* * * * *

09–20–0168

SYSTEM NAME:

Curricula Vitae of Consultants to the National Center for Health Statistics, HHS/CDC/NCHS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Center for Health Statistics, Centers for Disease Control, Presidential Building, Rm. 1140, 6525 Belcrest Road, Hyattsville, MD 20782.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Centers for Disease Control, Presidential Building, Rm. 1140, 6525 Belcrest Road, Hyattsville, MD 20782.

* * * * *

09–20–0169

SYSTEM NAME:

Users of Health Statistics, HHS/CDC/NCHS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Center for Health Statistics, Centers for Disease Control, Presidential Building, Rm. 1140, 6525 Belcrest Road, Hyattsville, MD 20782.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Centers for Disease Control, Presidential Building, Rm. 1140, 6525 Belcrest Road, Hyattsville, MD 20782.

* * * * *

5. The following system notices have been updated to clarify and more accurately describe the system name, categories of individuals, categories of records, purpose, storage, retention, retrievability and record sources sections within the systems:

09–20–0001

SYSTEM NAME:

Certifying Interpreting Physician File, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Physicians who have taken the test to be certified to interpret X-rays under the Federal Mine and Safety Act of 1977. Records are also maintained on physicians who have attempted to obtain certification, but did not qualify.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Certification qualifications of physicians.

* * * * *

PURPOSE(S):

The main purpose is to certify physicians as qualified to interpret X-rays using the ILO system of classification for pneumoconiosis. Data is provided to the Social Security Administration to be used in approving title IV benefits under the Act.

* * * * *

STORAGE:

File folders, microcomputer files, computer tapes/disks and printouts, microfilm.

* * * * *

RETENTION AND DISPOSAL:

Records are retained indefinitely. Disposal methods include erasing computer tapes, burning or shredding printouts or transferring records to the Federal Records Center.

* * * * *

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual or his/her designee.

* * * * *

09–20–0102

SYSTEM NAME:

Alien Mental Waiver Program, HHS/CDC/NCPS.

Minor alterations have been made to this system notice. The following categories and revised in their entirety:

* * * * *

RETENTION AND DISPOSAL:

Records are maintained in agency for five years. Disposal methods include burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 10 years old, unless needed for further study.

* * * * *

RECORD SOURCE CATEGORIES:

Prior to alien's arrival in the U.S., medical information supporting the diagnosis of a physical or mental disorder with associated harmful behavior is submitted by the Department of State and/or Justice Department (INS); after arrival, mental status evaluations submitted by medical specialists, schools, or institutions.

* * * * *

09–20–0112

SYSTEM NAME:

Fellowship Program and Guest Researcher Records, HHS/CDC/PMO.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Visiting Fellows, Visiting Associates, Visiting Scientists, Staff Fellows, and Guest Researchers within CDC and ATSDR.

* * * * *

RETRIEVABILITY:

The system is accessed by name of the individual, fellow, or guest researcher.

* * * * *

09–20–0147

SYSTEM NAME:

Occupational Health Epidemiological Studies, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Working populations exposed to physical and/or chemical agents that may damage the human body in any way. Some examples are: (1) Organic carcinogens, (2) inorganic carcinogens, (3) mucosal or dermal irritants, (4) fibrogenic materials, (5) acute toxic agents including sensitizing agents, (6) neurotoxic agents, (7) mutagenic (male and female) and teratogenic agents, (8) bio-accumulating non-carcinogen agents, and (9) chronic vascular disease-causing agents. Also included are those individuals in the general population who have been selected as control groups.

* * * * *

PURPOSE(S):

Studies carried out under this system are to evaluate mortality and morbidity of occupationally related diseases, to determine the cause and prevention of occupationally related diseases, and to lead toward future prevention of occupationally related diseases.

* * * * *

RETENTION AND DISPOSAL:

Records are maintained in agency for five years. Every attempt is made to strip personal identifiers from records and destroy the records when they are no longer needed. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

* * * * *

09-20-0154

SYSTEM NAME:

Medical and Laboratory Studies, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have had examinations by Division of Respiratory Disease Studies (DRDS) staff or submitted medical information in cooperation with a DRDS study.

* * * * *

STORAGE:

Computer tapes/disks and printouts, microfiche, and manual files.

* * * * *

RETENTION AND DISPOSAL:

Records are maintained in agency for a minimum of three years. Source documents for computer disposed of when no longer needed in the study; as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

* * * * *

09-20-0160

SYSTEM NAME:

Records of Subjects in Health Promotion and Education Studies, HHS/CDC/NCCDPHP.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

SAFEGUARDS:

1. *Authorized users:* Access is granted to only a limited number of researchers and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical safeguards:* Locked cabinets in locked rooms, guard service in buildings, personnel screening of visitors, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. *Procedural safeguards:* Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special "certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation guidelines:* The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

* * * * *

09-20-0167

SYSTEM NAME:

Health Resources Utilization Statistics, HHS/CDC/NCHS.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

PURPOSE(S):

The data are used for statistical purposes only, as specified by statute, Section 308(d) of 42 U.S.C. 242m. Uses within the Department include the preparation of aggregated data in the form of statistical tables for publications, analysis and interpretation to meet the legislative mandates of 42 U.S.C. 242k, i.e., collection of statistics on the utilization of health services, including the utilization of: (1) Long-term care services and nursing home facilities to determine levels of illness and disability, effects on the serviced population, and the costs of care; (2) ambulatory health services by specialties and types of practice of the health professionals providing such services; and (3) short-stay hospitals to determine characteristics of patients, length of stay, diagnosis and surgical operations, and utilization patterns of care in hospitals of different size and ownership.

* * * * *

6. To reflect the discontinuation of keypunch operations, the safeguards information in a number of NCHS systems is being revised. System notices 09-20-0164, 09-20-0166, and 09-20-

0167 are amended to contain the following Safeguards category:

* * * * *

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained. NCHS and its contractors implement personnel, physical, and procedural safeguards as follows:

1. *Authorized users:* Persons authorized and needing to use the records, including project directors, contract officers, interviewers, analysts, statisticians, statistical clerks, and data entry personnel on the staffs of the Center and the contractors.

2. *Physical safeguards:* The manual portions of the records are stored in locked files or offices when not in use. (The automated portions of the records do not contain individually identifiable data. Because they are not subject to the Privacy Act, descriptions of the computer safeguards used are not included in this notice.) Access to the buildings in which the manual records are stored is controlled by special entry devices and 24-hour security guards.

3. *Procedural safeguards:* All employees of NCHS and contractor personnel with access to NCHS records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information; periodic training sessions are conducted to reinforce the confidentiality restrictions.

Contractors who maintain records in the system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These safeguards are in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; supplementary chapter PHS.hf: 45–13; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 312); and the NCHS Staff Manual on Confidentiality.

* * * * *

The Safeguards section of system notice 09–20–0165 is similarly amended to reflect the discontinuation of keypunch operations:

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained. NCHS and its contractors implement personnel, physical, and procedural safeguards as follows:

1. *Authorized users:* Persons authorized and needing to use the records, including project directors, contract officers, interviewers, analysts, statisticians, statistical clerks, and data entry personnel on the staffs of the Center and the contractors.

2. *Physical safeguards:* The manual portions of the records are stored in locked files or offices when not in use. The automated records and the computer equipment are in secured areas with fire extinguishers and sprinkler system. Access to the buildings in which the manual and the automated records are stored is controlled by special entry devices and 24-hour security guards.

3. *Procedural safeguards:* All employees of NCHS and contractor personnel with access to NCHS records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information; periodic training sessions are conducted to reinforce the confidentiality restrictions. Data stored in computers are accessed through the use of passwords/keywords known only to the principal investigators and authorized personnel. These passwords/keywords are changed frequently.

Contractors who maintain records in the system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These safeguards are in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; supplementary chapter PHS.hf: 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 312); and the NCHS Staff Manual on Confidentiality.

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7. The following changes are to correct errors in the **Federal Register** Privacy Act Issuances, 1991 Compilation of Systems of Records:

09–20–0000

SYSTEM NAME:

Cooperative Mycoses Study, HHS/CDC/NCID.

* * * * *

09–20–0027

SYSTEM NAME:

Radiation Exposure Records for NIOSH Employees, HHS/CDC/NIOSH.

This system should have been deleted, as noted in the **Federal Register**, 54 FR 47905, November 17, 1989.

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09–20–0089

SYSTEM NAME:

Studies of Treatment of Tuberculosis and Other Mycobacterioses, HHS/CDC/NCPS.

* * * * *

SYSTEM LOCATION:

Division of Tuberculosis Elimination, National Center for Prevention Services, 1680 Freeway Office Park, Rooms 145–149, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333 and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identified data are currently located is available upon request to the system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Tuberculosis Elimination, National Center for Prevention Services, 1680 Freeway Office Park, Rm. 111, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

09–20–0090

SYSTEM NAME:

Studies of Testing for Tuberculosis and Other Mycobacterioses, HHS/CDC/NCPS.

* * * * *

SYSTEM LOCATION:

Division of Tuberculosis Elimination, National Center for Prevention Services, 1680 Freeway Office Park, Rooms 127, 137, 142, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333 and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

* * * * *

ROUTINE USES:

Test results will be returned to the collaborating physician or responsible hospital official.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Tuberculosis Elimination, National Center for Prevention Services, 1680 Freeway Office Park, Rm. 111, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

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09-20-0096

SYSTEM NAME:

Records of Tuskegee Study Health Benefit Recipients, HHS/CDC/NCPS.

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09-20-0106

SYSTEM NAME:

Specimen Handling for Testing and Related Data, HHS/CDC/NCID.

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09-20-0161

SYSTEM NAME:

Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/NCPS.

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09-20-0163

SYSTEM NAME:

Applicants for National Center for Health Statistics Technical Assistance, HHS/CDC/NCHS.

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09-20-0164

SYSTEM NAME:

Health and Demographic Surveys Conducted in Probability Samples of the United States Population, HHS/CDC/NCHS.

* * * * *

Dated: October 26, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-26606 Filed 12-30-92; 8:45 am]

BILLING CODE 4160-18-M

Agency for Toxic Substances and Disease Registry

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Agency for Toxic Substances and Disease Registry, HHS.

ACTION: Publication of minor changes to notice of system of records.

SUMMARY: In accordance with the Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Agency for Toxic Substances and Disease Registry (ATSDR) is publishing the table of contents and minor changes to its notice of system of records.

SUPPLEMENTARY INFORMATION: ATSDR has completed the annual review of its system of records and is publishing below the table of contents and those minor changes which affect the public's right or need to know, such as changes in the system location of records, or the designation and address of system managers.

1. Table of Contents

The following system notice currently maintained by ATSDR was published in the **Federal Register,** 53 FR 30720, August 15, 1988:

09-19-0001 Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/DHS.

2. System 09-19-0001 is amended to reflect changes in the system location of records and the designation and address of the system managers and to clarify and update the categories of individuals and retention sections of the system:

09-19-0001

SYSTEM NAME:

Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/DHS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Bldg. 4, 1600 Clifton Road, Atlanta, GA 30333.

Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Executive Park, Bldg. 31, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Data are also located at contractor sites. A list of contractor sites where individually identified data are currently located is available upon request to the system manager.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals exposed or potentially exposed to toxic or hazardous substances may include the following: (1) Selected persons living or having lived near a hazardous waste site; (2) Persons exposed or potentially exposed to environmental hazards resulting from ingestion of contaminated drinking water, persons exposed to contaminated soil, persons living on mining wastes, persons inhaling toxic substances (all of which may or may not be the result of contamination by a specified waste site); (3) Participants in health outcome studies (including exposure studies, symptom and disease prevalence studies, cluster investigations), and epidemiologic studies to determine the public health threat of exposure to hazardous or toxic substances; (4) Registry participants with exposures associated with sites listed on the Environmental Protection Agency's (EPA) National Priorities List (NPL), non-NPL sites on which epidemiologic or health outcome studies may have been conducted, sites of emergency activities, and other sites that are the subject of a citizen's petition; (5) Registry participants with diseases associated or potentially associated with exposure to toxic or hazardous substances; (6) Persons working or having worked in response actions at hazardous waste sites or other occupational settings where exposure to hazardous substances occurred. The first five categories of persons above may include children as well as adults.

* * * * *

PURPOSE(S):

Records in this system are used to carry out the legislated environmental public health mandates of the Agency for Toxic Substances and Disease Registry (ATSDR). Specifically this information is used to: (1) Identify the public health threat caused by exposure to toxic and hazardous substances utilizing health outcome studies, epidemiologic studies, and other health effects studies; and (2) establish and maintain national registries of persons exposed to toxic substances and persons with serious diseases and illnesses associated or potentially associated with exposure to toxic substances. Registries will have the additional purposes of tracking exposed individuals, keeping them informed of health effects of exposure, preventive measures and possible breakthroughs in treatment, along with serving as a centralized location for research data on these exposed individuals.

Records may be disclosed to the National Center for Environmental Health, Centers for Disease Control, for laboratory analysis of samples and for collaborative efforts (i.e., providing staff, performing statistical analysis, etc.) in coordinating investigations. Records (i.e., name, Social Security number, date of birth) may be disclosed to the National Center for Health Statistics to obtain a determination of vital status. Death certificates with the cause of death will then be obtained from Federal, state, or local agencies to enable ATSDR (1) to determine whether excess mortality is occurring among individuals exposed to toxic or hazardous substances, and (2) to notify similarly exposed persons. Records may also be disclosed to the Social Security Administration for additional sources of locating information.

* * * * *

RETENTION AND DISPOSAL:

A Comprehensive Records Control Schedule has been proposed for ATSDR at the time of this publication. Current procedures allow the system manager to keep the records for 20 years, unless needed for further study. Registry records will be actively maintained for as long as funding is provided for by legislation. Contractors will retain the records only as long as necessary to complete data collection and verify ATSDR's receipt of the data in usable form. Record copy of study reports is maintained in the agency from two to three years in accordance with retention schedules. Source documents for computer tapes or disks are disposed of when no longer needed in the study as determined by the system manager, and as provided in the signed consent form, as appropriate.

Records may be transferred to a Federal Records Center for storage when no longer needed for evaluation or analysis. Disposal methods include the paper recycling process, burning or shredding hard copy records, and erasing computer tapes and disks.

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SYSTEM MANAGER(S) AND ADDRESS

Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Bldg. 4, 1600 Clifton Road, Atlanta, GA 30333.

Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Executive Park, Bldg. 31, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Deputy Assistant Administrator, Agency for Toxic Substances and Disease Registry, Executive Park, Bldg. 37, 1600 Clifton, Road, Atlanta, GA 30333.

* * * * *

Dated: October 28, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92–26607 Filed 12–30–92; 8:45 am]

BILLING CODE 4160–70–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Indian Health Service, PHS, HHS.

ACTION: Annual Publication of Revisions to PHS Privacy Act System Notices.

SUMMARY: The Indian Health Service (IHS) is publishing this notice in accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," which requires that agencies review each system of records annually and publish any minor changes in the Federal Register.

The IHS has completed the annual review of its systems of records and is publishing below (1) a table of contents which lists all active systems of records in the IHS, and (2) those minor changes which affect the public's right of need to know, such as changes in the system location of records or the address of system managers.

Table of Contents:

09–17–0001 Health and Medical Records Systems, HHS/IHS/OHP.
09–17–0002 Indian Health Service Scholarship Programs, HHS/IHS/OHP.
09–17–0003 Indian Health Service Staff Credentials and Privileges Records, HHS/IHS/OHP.

Minor changes have been made to the following 2 IHS Systems of Records:

09–17–0001

SYSTEM NAME:

Health and Medical Records Systems, HHS/IHS/OHP.

Substitute Appendix 1 in its entirety as listed below:

* * * * *

Appendix 1—System Managers and IHS Locations Under Their Jurisdiction Where Records are Maintained:

Director, Aberdeen Area Indian Health Service, Room 309, Federal Building, 115 Fourth Avenue, SE., Aberdeen, South Dakota 57401
Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, Eagle Butte, South Dakota 57625
Director, Crow Creek Service Unit, Ft. Thompson Indian Health Center, Ft. Thompson, South Dakota 57339
Director, Flandreau Indian School Health Center, RR1, Box 10, Flandreau, South Dakota 57028
Director, Fort Berthold Service Unit, Minni-Tohe Indian Health Center, New Town, North Dakota 58763
Director, Fort Totten Service Unit, Fort Totten Indian Health Center, Fort Totten, North Dakota 58335
Director, Kyle Indian Health Center, P.O. Box 540, Kyle, South Dakota 57752
Director, Lower Brule Indian Health Center, Lower Brule, South Dakota 57548
Director, McLaughlin Indian Health Center, McLaughlin, South Dakota 57642
Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071
Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770
Director, Rapid City Service Unit, Rapid City Indian Hospital, Rapid City, South Dakota 57701
Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570
Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, Sisseton, South Dakota 57262
Director, Standing Rock Service Unit, Fort Yates Indian Hospital, Fort Yates, North Dakota 58538
Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, Belcourt, North Dakota 58316

Director, Wahpeton Indian School Health Center, Wahpeton, North Dakota 58075
Director, Wanblee Indian Health Center, Wanblee, South Dakota 57577
Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, Wagner, South Dakota 57380
Director, Alaska Area Native Health Service, 250 Gambell Street, Anchorage, Alaska 99501
Director, Alaska Native Health Center, St. George Island, Alaska 99660
Director, Alaska Native Health Center, St. Paul Island, Alaska 99660
Director, Anchorage Service Unit, PHS, Alaska Native Medical Center, 255 Gambell St., Anchorage, Alaska 99501
Director, Annette Islands Service Unit, Metlakatla Alaska Native Health Center, Box 428, Metlakatla, Alaska 99926
Director, Barrow Service Unit, Barrow Alaska Native Hospital, Barrow, Alaska 99723
Director, Ketchikan Alaska Native Health Center, 3289 Tongass Avenue, Ketchikan, Alaska 99901
Director, Kotzebue Service Unit, Kotzebue Alaska Native Hospital, Kotzebue, Alaska 99752
Director, Southeast Area Regional Health Center, 3272 Hospital Drive, Juneau, Alaska 99801
Director, Yukon-Kuskokwim-Delta Service Unit, Yukon-Kuskokwim-Delta Regional Hospital, Indian Health Service, Bethel, Alaska 99559
Director, Albuquerque Area Indian Health Service, 505 Marquette, NW., Suite 1502, Albuquerque, New Mexico 87102–2163
Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, PO Box 130, San Fidel, New Mexico 87049
Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, NE., Albuquerque, New Mexico 87106
Director, Canoncito Indian Health Station, c/o Acoma-Canoncito-Laguna Indian Hospital, PO Box 130, San Fidel, New Mexico 87049
Director, Cochiti Indian Health Station, Cochiti, New Mexico 87041
Director, Dulce Indian Health Center, Dulce, New Mexico 87528
Chief, Dental Program, IHS Dental Training Center, Southwestern Indian Polytechnical Institute, 9168 Coors Road, NW., PO Box 25927, Albuquerque, New Mexico 87125
Director, Indian School Health Center, Southwestern Indian Polytechnical Institute, 9168 Coors Road, NW., PO Box 25927, Albuquerque, New Mexico 87125
Director, Isleta Indian Health Center, PO Box 429, Isleta, New Mexico 87022
Director, Jemez Indian Health Center, PO Box 256, Jemez Pueblo, New Mexico 87024
Director, Laguna Indian Health Center, PO Box 199, New Laguna, New Mexico 87038
Director, Mescalero Service Unit, Mescalero Indian Hospital, PO Box 210, Mescalero, New Mexico 88340
Director, New Sunrise Regional Treatment Center, PO Box 219, San Fidel, New Mexico 87049
Director, Sandia Indian Health Station, PO Box 6008, Bernalillo, New Mexico 87004
Director, Santa Ana Indian Health Station, PO Box 580, Bernalillo, New Mexico 87004
Director, San Felipe Indian Health Station, General Delivery, San Felipe Pueblo, New Mexico 87001
Director, San Juan Indian Health Station, San Juan, New Mexico 87566
Director, Santa Clara Indian Health Center, PO Box 1322, Espanola, New Mexico 87532
Director, Santa Domingo Indian Health Station, Santo Domingo, New Mexico 87052
Director, Santa Fe Service Unit, Santa Fe Indian Hospital, 1700 Cerrillos Road, Santa Fe, New Mexico 87501
Director, Southern Colorado-Ute Service Unit, PO Box 778, Ignacio, Colorado 81137
Director, Southern Ute Health Center, Ignacio, Colorado 81137
Director, Taos Indian Health Center, Taos, New Mexico 87571
Director, Ute Mountain Ute Health Center, Towaoc, Colorado 81334
Director, White Mesa Indian Health Station, General Delivery, Towaoc, Colorado 81334
Director, Zia Indian Health Station, General Delivery, San Ysidro, New Mexico 87053
Director, Zuni-Ramah Service Unit, Zuni Indian Hospital, Zuni, New Mexico 87327
Director, Bemidji Area Indian Health Service, 203 Federal Building, Bemidji, Minnesota 56601
Director, Ball Club Indian Health Station, Ball Club, Minnesota 56622
Director, Cass Lake Service Unit, Cass Lake Indian Hospital, Cass Lake, Minnesota 56633
Director, Eastern Michigan Service Unit, Kincheloe Indian Health Center, Kincheloe, Minnesota 49788
Director, Inger Indian Health Station, Inger Route, Deer River, Minnesota 56636
Director, Naytahwaush Indian Health Station, Naytahwaush, Minnesota 56566
Director, Onigum Indian Health Station, Star Route, Walker, Minnesota 56484
Director, Pine Point Indian Health Station, White Earth, Minnesota 56591
Director, Ponemah Indian Health Station, Ponemah, Minnesota 56666
Director, Red Lake Service Unit, Red Lake Indian Hospital, Red Lake, Minnesota 56671
Director, Squaw Lake Indian Health Station, Squaw Lake, Minnesota 56681
Director, White Earth Service Unit, White Earth Indian Health Center, White Earth, Minnesota 56591
Director, Billings Area Indian Health Service, P.O. Box 2143, 711 Central Avenue, Billings, Montana 59103
Director, Arapahoe Indian Health Center, Arapahoe, Wyoming 82510
Director, Blackfeet Service Unit, Browning Indian Hospital, Browning, Montana 59417
Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022
Director, Flathead Service Unit, St. Ignatius Indian Health Center, St. Ignatius, Montana 59865
Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526
Director, Fort Peck Service Unit, Poplar Indian Health Center, Poplar, Montana 59255
Director, Hays Indian Health Station, Hays, Montana 59527
Director, Heart Butte Indian Health Station, Heart Butte, Montana 59448
Director, Lodge Grass Indian Health Center, Lodge Grass, Montana 59050
Director, Northern Cheyenne Service Unit, Lame Dear Indian Health Center, Lame Deer, Montana 59043
Director, Pryor Indian Health Station, Pryor, Montana 59066
Director, Polson Indian Health Center, 320–B 4th Avenue East, Polson, Montana 59860
Director, Rocky Boy's Service Unit, Box Elder Indian Health Center, Box Elder, Montana 59521
Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514
Director, Wolf Point Indian Health Center, Wolf Point, Montana 59201
Director, California Area Indian Health Service, 1825 Bell Street, Suite 200, Sacramento, California 95825–1097
Director, Nashville Area Indian Health Service, 3310 Perimeter Hill Drive, Nashville, Tennessee 37211–4139
Director, Cherokee Service Unit, Cherokee Indian Hospital, Cherokee, North Carolina 28719
Director, Unity Regional Youth Treatment Center, PO Box C–201, Cherokee, North Carolina 28719
Director, Navajo Area Indian Health Service, PO Box G, Window Rock, Arizona 86515
Director, Chilchinbeto Indian Health Station, c/o Kayenta Indian Health Center, PO Box 368, Kayenta, Arizona 86033
Chief Executive Officer, Chinle Service Unit, PO Drawer P.H., Chinle, Arizona 86503
Chief Executive Officer, Crownpoint Service Unit, Crownpoint Indian Hospital, PO Box 358, Crownpoint, New Mexico 87313
Director, Dennebito Indian Health Station, c/o Tuba City Indian Hospital, Tuba City, Arizona 86045
Director, Dennehotso Indian Health Center, c/o Kayenta Indian Health Center, PO Box 368, Kayenta, Arizona 86033
Director, Dilkon Indian Health Station, c/o Winslow Indian Health Center, PO Drawer 40, Winslow, Arizona 86047
Director, Dzilth-Na-O-Dith-Le Indian Health Center, Star Route 4, Box 5400, Bloomfield, New Mexico 87413
Chief Executive Officer, Fort Defiance Service Unit, Fort Defiance Indian Hospital, PO Box 649, Fort Defiance, Arizona 86504
Director, Fort Wingate Indian School Health Center, c/o Gallup Indian Medical Center, PO Box 1337, Gallup, New Mexico, 87301
Director, Gallup Service Unit, Gallup Indian Medical Center, PO Box 1337, Gallup, New Mexico 87301
Director, Inscription House Indian Health Center, PO Box 7397, Shonto, Arizona 86044
Chief Executive Officer, Kayenta Service Unit, Kayenta Indian Health Center, PO Box 366, Kayenta, Arizona 86033
Director, Leupp Indian Health Station, c/o Winslow Indian Health Center, PO Drawer 40, Winslow, Arizona 86047
Facility Director, Montezuma Creek Health Center, Montezuma Creek, Utah 84534

Director, Pinon Indian Health Station, c/o Chinle Indian Hospital, PO Box P.H., Chinle, Arizona 86503
Director, Pueblo Pintado Indian Health Station, c/o Crownpoint Indian Hospital, PO Box 358, Crownpoint, New Mexico 87313
Director, Rock Point Indian Health Station, c/o Chinle Indian Hospital, PO Box P.H., Chinle, Arizona 86503
Director, Sanostee Indian Health Station, Shiprock Indian Hospital, PO Box 160, Shiprock, New Mexico 87420
Chief Executive Officer, Shiprock Service Unit, Shiprock Indian Hospital, PO Box 160, Shiprock, New Mexico 87420
Director, Teec Nos Pos Indian Health Center, PO Drawer D, Teec Nos Pos, Arizona 86514
Director, Toadlena Indian Health Station, c/o Shiprock Indian Hospital, PO Box 160, Shiprock, New Mexico 87420
Director, Tohatchi Indian Health Center, PO Box 142,Tohatchi, New Mexico 87325
Chief Executive Officer, Tsaile Indian Health Center, PO Box 467, Tsaile, Arizona 86556
Chief Executive Officer, Tuba City Service Unit, Tuba City Indian Hospital, Tuba City, Arizona 86045
Chief Executive Officer, Winslow Service Unit, Winslow Indian Health Center, PO Drawer 40, Winslow, Arizona 86047
Director, Oklahoma City Area Indian Health Service, Five Corporation Plaza, 3625 NW. 56th Street, Oklahoma City, Oklahoma 73112
Director, Ada Service Unit, Carl Albert Indian Hospital, 1001 North Country Club Drive, Ada, Oklahoma 74820
Director, Anadarko Indian Health Center, PO 828, Anadarko, Oklahoma 73005
Director, Carnegie Indian Health Center, PO Box 1120, Carnegie, Oklahoma 73105
Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, West Will Rogers Boulevard & Moore, Claremore, Oklahoma 74017
Director, Clinton Service Unit, Clinton Indian Hospital, Route 4, Box 213, Clinton, Oklahoma 73601
Director, Concho Indian Health Clinic, PO Box 150, Concho, Oklahoma 73022
Director, Kansas Service Unit, Holton Indian Health Center, 100 West 16th Street, Holton, Kansas 66436
Facility Director, Lawrence (Haskell) Indian Health Center, 2415 Massachusetts Avenue, Lawrence, Kansas 66044
Director, Lawton Service Unit, Lawton Indian Hospital, Lawton, Oklahoma 73501
Director, Miami Indian Health Center, PO Box 1498, Miami, Oklahoma 74855
Director, Pawhuska Indian Health Center, 715 Grandview, Pawhuska, Oklahoma 74056
Director, Pawnee Service Unit, Pawnee Indian Health Center, RR2, Box 1, Pawnee, Oklahoma 74058
Director, Shawnee Service Unit, Shawnee Indian Health Center, 2001 South Gordon Cooper Drive, Shawnee, Oklahoma 74801
Director, Tahlequah Service Unit, W.W. Hastings Indian Hospital, 100 S. Bliss, Tahlequah, Oklahoma 74464
Director, Watonga Indian Health Center, PO Box 878, Watonga, Oklahoma 73772
Director, Wewoka Indian Health Center, PO Box 1475, Wewoka, Oklahoma 74884
Director, White Eagle Indian Health Center, PO Box 2071, Ponca City, Oklahoma 74601
Director, Phoenix Area Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, Arizona 85016–5981
Director, Bylas Indian Health Center, PO Box 208, San Carlos, Arizona 85550
Director, Chemehuevi Indian Health Clinic, Chemehuevi Valley, California 92363
Director, Cibecue Indian Health Center, Cibecue, Arizona 85941
Director, Colorado River Service Unit, Parker Indian Hospital, Route 1, PO Box 12, Parker, Arizona 85344
Director, Fort McDermitt Indian Health Station, P.O. Box 475, McDermitt, Nevada 89421
Director, Fort McDowell Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016
Director, Fort Yuma Service Unit, Fort Yuma Indian Hospital, P.O. Box 1368, Fort Yuma, Arizona 85364
Director, Gila Crossing Indian Health Clinic, Route 1, Box 770, Laveen, Arizona 85339
Director, Havasupai Indian Health Station, Supai, Arizona 86435
Director, Keams Canyon Service Unit, Keams Canyon Indian Hospital, P.O. Box 98, Keams Canyon, Arizona 86034
Director, Owyhee Service Unit, Owyhee Indian Hospital, P.O. Box 212, Owyhee, Nevada 89832
Director, Peach Springs Indian Health Center, Peach Springs, Arizona 86434
Director, Phoenix Indian School Health Center, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016
Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th St., Phoenix, Arizona 85016
Director, Pyramid Lake Indian Health Clinic, Nixon, Nevada 89424
Director, Sacaton Service Unit, Sacaton Indian Hospital, Sacaton, Arizona 85247
Director, Salt River Indian Health Center, Route 1, Box 215, Scottsdale, Arizona 85256
Director, San Carlos Service Unit, San Carlos Indian Hospital, San Carlos, Arizona 85550
Director, San Lucy Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016
Director, Schurz Service Unit, Schurz Indian Hospital, Schurz, Nevada 89427
Director, Second Mesa Indian Health Center, General Delivery, Second Mesa, Arizona 86043
Director, Sherman Indian School Health Center, 8934 Magnolia, Riverside, California 92503
Director, Southern Bank Indian Health Clinic, 1545 Silver Eagle Road, Elko, Nevada 89801
Director, Stewart Indian Health Station, Stewart, Nevada 89437
Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Roosevelt, Utah 84066
Director, Whiteriver Service Unit, Whiteriver Indian Hospital, Whiteriver, Arizona 85941
Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204–2892
Director, Chemawa Indian Health Center, 3750 Chemawa Road, NE, Salem, Oregon 97305–1198
Director, Colville Service Unit, Colville Indian Health Center, Nespelem, Washington 99155
Director, Coeur d'Alene Indian Health Station, Coeur d'Alene, Idaho 83814
Director, Fort Hall Service Unit, Fort Hall Indian Health Center, P.O. Box 317, Fort Hall, Idaho 83203
Director, Inchelium Indian Health Center, Inchelium, Washington 99138
Director, Kamiah Indian Health Station, Kamiah, Idaho 83536
Director, Neah Bay Service Unit, Neah Bay Indian Health Center, P.O. Box 418, Neah Bay, Washington 98357
Director, Northern Idaho Service Unit, Northern Idaho Indian Health Center, P.O. Drawer 367, Lapwai, Idaho 83540
Director, Northwest Washington Service Unit, Lummi Indian Health Center, 2592 Kwina Road, Bellingham, Washington 98225
Director, Puget Sound Service Unit, Puget Sound Indian Health Station, 1212 South Judkins, Seattle, Washington 98144
Director, Queets Indian Health Station, c/o Service Unit Director, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington, 98587
Director, Taholah Service Unit, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587
Director, Warm Springs Service Unit, Wellpinit Indian Health Center, P.O. Box 357, Wellpinit, Washington 99040
Director, Wellpinit Service Unit, David C. Wynecoop Memorial Clinic, P.O. Box 357, Wellpinit, Washington, 99040
Director, Yakima Service Unit, Yakima Indian Health Center, 401 Buster Road, Toppenish, Washington, 98948
Director, Yellowhawk Service Unit, Yellowhawk Indian Health Center, P.O. Box 160, Pendleton, Oregon 97801
Director, Office of Health Program Research & Development, Indian Health Service, 7900 S. J. Stock Road, Tucson, Arizona 85746–9352
Director, Santa Rosa Indian Health Center, HCR Box 700, Sells, Arizona 85634
Director, San Xavier Indian Health Center, 7900 S.J. Stock Road, Tucson, Arizona 85746–9352
Director, Sells Service Unit, Sells Indian Hospital, P.O. Box 548, Sells, Arizona 85634

09–17–0003

SYSTEM NAME:

Indian Health Service Medical Staff Credentials and Privileges Records, HHS/IHS/OHP.

Minor changes have also been made to this IHS System of Records. Substitute Appendix 1 in its entirety as listed below:

* * * * *

Appendix 1—System Managers and IHS Locations Under Their Jurisdiction Where Records Are Maintained

Director, Aberdeen Area Indian Health Service, Room 309, Federal Building, 115 Fourth Avenue, SE., Aberdeen, South Dakota 57401
Clinical Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, Eagle Butte, South Dakota 57625
Clinical Director, Crow Creek Service Unit, Ft. Thompson Indian Health Center, Ft. Thompson, South Dakota 57339
Clinical Director, Fort Berthold Service Unit, Minni-Tohe Indian Health Center, New Town, North Dakota 58763
Clinical Director, Fort Totten Service Unit, Fort Totten Indian Health Center, Fort Totten, North Dakota 58335
Clinical Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071
Clinical Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770
Clinical Director, Rapid City Service Unit, Rapid City Indian Hospital, Rapid City, South Dakota 57701
Clinical Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570
Clinical Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, Sisseton, South Dakota 57262
Clinical Director, Standing Rock Service Unit, Fort Yates Indian Hospital, Fort Yates, North Dakota 58538
Clinical Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, Belcourt, North Dakota 58316
Clinical Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, Wagner, South Dakota 57380
Director, Alaska Area Native Health Service, 250 Gambell Street, Anchorage, Alaska 99501
Clinical Director, Anchorage Service Unit, PHS, Alaska Native Medical Center, 255 Gambell St., Anchorage, Alaska 99501
Clinical Director, Annette Islands Service Unit, Metlakatla Alaska Native Health Center, Box 428, Metlakatla, Alaska 99926
Clinical Director, Barrow Service Unit, Barrow Alaska Native Hospital, Barrow, Alaska 99723
Clinical Director, Kotzebue Service Unit, Kotzebue Alaska Native Hospital, Kotzebue, Alaska 99752
Clinical Director, Yukon-Kuskokwim-Delta Service Unit, Yukon-Kuskokwim-Delta Regional Hospital, Indian Health Service, Bethel, Alaska 99559
Director, Albuquerque Area Indian Health Service, 505 Marquette, NW., Suite 1502, Albuquerque, New Mexico 87102–2163
Clinical Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049
Clinical Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, NE., Albuquerque, New Mexico 87106
Clinical Director, Mescalero Service Unit, Mescalero Indian Hospital, P.O. Box 210, Mescalero, New Mexico 88340
Clinical Director, New Sunrise Regional Treatment Center, P.O. Box 219, San Fidel, New Mexico 87049
Clinical Director, Santa Fe Service Unit, Santa Fe Indian Hospital, 1700 Cerrillos Road, Santa Fe, New Mexico 87501
Clinical Director, Southern Colorado-Ute Service Unit, P.O. Box 778, Ignacio, Colorado 81137
Clinical Director, Zuni-Ramah Service Unit, Zuni Indian Hospital, Zuni, New Mexico 87327
Director, Bemidji Area Indian Health Service, 203 Federal Building, Bemidji, Minnesota 56601
Clinical Director, Cass Lake Service Unit, Cass Lake Indian Hospital, Cass Lake, Minnesota 56633
Clinical Director, Eastern Michigan Service Unit, Kincheloe Indian Health Center, Kincheloe, Minnesota 49788
Clinical Director, Red Lake Service Unit, Red Lake Indian Hospital, Red Lake, Minnesota 56671
Clinical Director, White Earth Service Unit, White Earth Indian Health Center, White Earth, Minnesota 56591
Director, Billings Area Indian Health Service, P.O. Box 2143, 711 Central Avenue, Billings, Montana 59103
Clinical Director, Blackfeet Service Unit, Browning Indian Hospital, Browning, Montana 59417
Clinical Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022
Clinical Director, Flathead Service Unit, St. Ignatius Indian Health Center, St. Ignatius, Montana 59865
Clinical Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526
Clinical Director, Fort Peck Service Unit, Poplar Indian Health Center, Poplar, Montana 59255
Clinical Director, Northern Cheyenne Service Unit, Lame Deer Indian Health Center, Lame Deer, Montana 59043
Clinical Director, Rocky Boy's Service Unit, Box Elder Indian Health Center, Box Elder, Montana 59521
Clinical Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514
Director, California Area Indian Health Service, 1825 Bell Street, Suite 200, Sacramento, California 95825–1097
Director, Nashville Area Indian Health Service, 3310 Perimeter Hill Drive, Nashville, Tennessee 37211–4139
Clinical Director, Cherokee Service Unit, Cherokee Indian Hospital, Cherokee, North Carolina 28719
Director, Navajo Area Indian Health Service, P.O. Box G, Window Rock, Arizona 86515
Clinical Director, Chinle Service Unit, P.O. Drawer P.H., Chinle, Arizona 86503
Clinical Director, Crownpoint Service Unit, Crownpoint Indian Hospital, P.O. Box 358, Crownpoint, New Mexico 87313
Clinical Director, Fort Defiance Service Unit, Fort Defiance Indian Hospital, PO Box 649, Fort Defiance, Arizona 86504
Clinical Director, Gallup Service Unit, Gallup Indian Medical Center, PO Box 1337, Gallup, New Mexico 87301
Clinical Director, Kayenta Service Unit, Kayenta Indian Health Center, PO Box 368, Kayenta, Arizona 86033
Clinical Director, Shiprock Service Unit, Shiprock Indian Hospital, PO Box 160, Shiprock, New Mexico 87420
Clinical Director, Tuba City Service Unit, Tuba City Indian Hospital, PO Box H, Tuba City, Arizona 86045
Clinical Director, Winslow Service Unit, Winslow Indian Health Center, PO Drawer 40, Winslow, Arizona 86047
Director, Oklahoma City Area Indian Health Service, Five Corporation Plaza, 3625 NW. 56th. Street, Oklahoma City, Oklahoma 73112
Clinical Director, Ada Service Unit, Carl Albert Indian Hospital, 1001 North Country Club Drive, Ada, Oklahoma 74820
Clinical Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, West Will Rogers Boulevard & Moore, Claremore, Oklahoma 74017
Clinical Director, Clinton Service Unit, Clinton Indian Hospital, Route 4, Box 213, Clinton, Oklahoma 73601
Clinical Director, Kansas Service Unit, Holton Indian Health Center, 100 West 16th Street, Holton, Kansas 66436
Clinical Director, Lawton Service Unit, Lawton Indian Hospital, Lawton, Oklahoma 73501
Clinical Director, Pawnee Service Unit, Pawnee Indian Health Center, RR2, Box 1, Pawnee, Oklahoma 74058
Clinical Director, Shawnee Service Unit, Shawnee Indian Health Center, 2001 South Gordon Cooper Drive, Shawnee, Oklahoma 74801
Clinical Director, Tahlequah Service Unit, W.W. Hastings Indian Hospital, 100 S. Bliss, Tahlequah, Oklahoma 74464
Director, Phoenix Area Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, Arizona 85016–5981
Clinical Director, Colorado River Service Unit, Parker Indian Hospital, Route 1, P.O. Box 12, Parker, Arizona 85344
Clinical Director, Fort Yuma Service Unit, Fort Yuma Indian Hospital, P.O. Box 1368, Fort Yuma, Arizona 85364
Clinical Director, Keams Canyon Service Unit, Keams Canyon Indian Hospital, P.O. Box 98, Keams Canyon, Arizona 86034
Clinical Director, Owyhee Service Unit, Owyhee Indian Hospital, P.O. Box 212, Owyhee, Nevada 89832
Clinical Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th St., Phoenix, Arizona 85016
Clinical Director, Sacaton Service Unit, Sacaton Indian Hospital, P.O. Box 38, Sacaton, Arizona 85247
Clinical Director, San Carlos Service Unit, San Carlos Indian Hospital, P.O. Box 208, San Carlos, Arizona 85550
Clinical Director, Schurz Service Unit, Schurz Indian Hospital, Drawer "A", Schurz, Nevada 89427
Clinical Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Roosevelt, Utah 84026
Clinical Director, Whiteriver Service Unit, Whiteriver Indian Hospital, P.O. Box 860, Whiteriver, Arizona 85941
Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220

Southwest Third Avenue, Portland, Oregon 97204-2892
Clinical Director, Colville Service Unit, Colville Indian Health Center, Nespelem, Washington 99155
Clinical Director, Fort Hall Service Unit, Fort Hall Indian Health Center, P.O. Box 317, Fort Hall, Idaho 83203
Clinical Director, Neah Bay Service Unit, Neah Bay Indian Health Center, P.O. Box 418, Neah Bay, Washington, 98357
Clinical Director, Northern Idaho Service Unit, Northern Idaho Indian Health Center, P.O. Drawer 367, Lapwai, Idaho 83540
Clinical Director, Northwest Washington Service Unit, Lummi Indian Health Center, 2592 Kwina Road, Bellingham, Washington 98225
Clinical Director, Puget Sound Service Unit, Puget Sound Indian Health Station, 1212 South Judkins, Seattle, Washington 98144
Clinical Director, Taholah Service Unit, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587
Clinical Director, Warm Springs Service Unit, Wellpinit Indian Health Center, P.O. Box 357, Wellpinit, Washington 99040
Clinical Director, Wellpinit Service Unit, David C. Wynecoop Memorial Clinic, P.O. Box 357, Wellpinit, Washington 99040
Clinical Director, Yakima Service Unit, Yakima Indian Health Center, 401 Buster Road, Toppenish, Washington 98948
Clinical Director, Yellowhawk Service Unit, Yellowhawk Indian Health Center, P.O. Box 160, Pendleton, Oregon 97801
Director, Office of Health Program Research & Development, Indian Health Service, 7900 S.J. Stock Road, Tucson, Arizona 85746-9352
Clinical Director, Sells Service Unit, Sells Indian Hospital, P.O. Box 548, Sells, Arizona 85634

Dated: November 24, 1992.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 92-29255 Filed 12-30-92; 8:45 am]

BILLING CODE 4160-16-M

Health Resources and Services Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services; Public Health Service (PHS); Health Resources and Services Administration (HRSA).

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," HRSA is publishing minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: HRSA has completed the annual review of its systems of records and is publishing below those minor changes which affect the public's right or need to know, such as system deletions, title changes, and changes in the system location of records, or the addresses of systems managers.

A routine use was added to the following system: 09-15-0056 National Vaccine Injury Compensation Program, HHS/HRSA/BHPr, 57 FR 13115, April 15, 1992.

Dated: October 22, 1992.

James A. Walsh,

Associate Administrator for Operations and Management.

Table of Contents

The following table of contents lists all currently active Privacy Act systems of records maintained by the Health Resources and Services Administration:

09-15-0001 Division of Federal Occupational Health and Counseling Records, HHS/HRSA/BPHC.
09-15-0002 Record of Patients' Personal Valuables and Monies, HHS/HRSA/BPHC.
09-15-0003 Contract Physicians and Consultants, HHS/HRSA/BPHC.
09-15-0004 Federal Employee Occupational Health Data System, HHS/HRSA/BPHC.
09-15-0007 Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/BPHC.
09-15-0008 Emergency Non-PHS Treatment Authorization File, HHS/HRSA/BPHC.
09-15-0022 Accounts Receivable, HHS/HRSA/OA.
09-15-0026 Medical Fellowships and Educational Loans, HHS/HRSA/OA.
09-15-0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BPHC.
09-15-0029 PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BPHC.
09-15-0037 Public Health Service (PHS) and National Health Service Corps (NHSC) Health Care Provider Records System, HHS/HRSA/BPHC.
09-15-0038 Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BPHC.
09-15-0039 Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.
09-15-0040 Health Professions Student Loan Repayment Program, HHS/HRSA/BHPr.
09-15-0041 Health Professions Student Loan Cancellation, HHS/HRSA/BHPr.
09-15-0042 Physician Shortage Area Scholarship Program, HHS/HRSA/BPHC.
09-15-0043 Cuban Loan Program, HHS/HRSA/OA.
09-15-0044 Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.
09-15-0045 Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA.
09-15-0046 Health Professions Planning and Evaluation, HHS/HRSA/OA.
09-15-0052 Nurse Practitioner and Nurse Midwifery Traineeship Program, HHS/HRSA/BHPr.
09-15-0054 National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr.
09-15-0055 Organ Procurement and Transplantation Network (OPTN) Data System, HHS/HRSA/BHRD.
09-15-0056 National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.
09-15-0057 Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BHPr.

Changes

09-15-0001

SYSTEM NAME:

Division of Federal Occupational Health and Counseling Records, HHS/HRSA/BPHC.

Minor changes have been made to this system. The SYSTEM NAME and following categories should be revised:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees enrolled in PHS/Division of Federal Occupational Health (DFOH) Service Provision Sites (Health Units) and individuals examined/treated/counseled by DFOH staff.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

2. In the event of a change in sponsorship of a PHS/DFOH health care unit or in a case of mass transfer of employees covered by a PHS/DFOH health care unit to one served by a nondepartmental organization, the health records will be transferred to the custodianship of the new organization.

* * * * *

SAFEGUARDS:

1. *Authorized Users:* DFOH Service Provision Site (Health Unit) personnel, physicians, and other allied health professionals.

2. *Physical Safeguards:* All documents are secured during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. *Procedural safeguards:* All users of personal information in connection with the performance of their jobs protect information from the public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff

members trained in accordance with the DFOH Manual of Operations. Patient-authorized release of records to a third party will only be accomplished when the third party has a suitable system of records, such as those meeting the requirements of 5 CFR part 293, designed to minimize unauthorized access. Contractors are required to maintain confidentiality safeguards with respect to these records. These safeguards are in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

The records become inactive after one year of inactivity. Inactive records are maintained at the Service Provision Site (Health Unit) for six years. After six years of inactivity, they are transferred to the National Personnel Center in St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Occupational Health, Bureau of Primary Health Care, Health Resources and Services Administration, 5515 Security Lane, Suite 901, Rockville, MD 20852.

* * * * *

09–15–0002

SYSTEM NAME:

Record of Patients' Personal Valuables and Monies, HHS/HRSA/BPHC.

Minor changes have been made to this system notice. The SYSTEM NAME category should be revised.

* * * * *

09–15–0003

SYSTEM NAME:

Contract Physicians and Consultants, HHS/HRSA/BPHC.

Minor changes have been made to this system notice. The SYSTEM NAME and following categories should be revised:

* * * * *

SYSTEM LOCATION:

Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857.

Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medical and allied health professionals (e.g., physicians, nurses, physical therapists, and dentists) who have contracted with the Bureau of Primary Health Care to provide services to beneficiaries.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Beneficiary Medical Programs, Bureau of Primary Health Care, Health Resources and Services Administration, Room 7–36, 5600 Fishers Lane, Rockville, MD 20857.

General Services Officer, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

* * * * *

09–15–0004

SYSTEM NAME:

Federal Employee Occupational Health Data System, HHS/HRSA/BPHC.

Minor changes have been made to this system. The SYSTEM NAME and following categories should be revised:

* * * * *

SYSTEM LOCATION:

Division of Federal Occupational Health, Bureau of Primary Health Care, 5515 Security Lane, Suite 901, Rockville, MD 20852. Data are maintained at the respective service provision sites throughout the United States and Puerto Rico, where services are provided to employees of various Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees provided occupational Health services in PHS/Division of Federal Occupational Health (DFOH) service provision sites.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

3. In the event of a change in sponsorship of a PHS/DFOH service provision site or in case of mass transfer of employees covered by a PHS/DFOH service provision site to one served by a nondepartmental organization, the occupational health records will be transferred to the custodianship of the new organization.

* * * * *

SAFEGUARDS:

* * * * *

3. *Procedural Safeguards:* A user verification and validation code is required to access POIS computer software and internal programming enables file and data element specific access control on a user specific basis. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to automated records is strictly limited to those staff members trained in accordance with the DFOH POIS user's manual. Contractors are required to maintain confidentiality safeguards with respect to these records. These safeguards are in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Occupational Health, Bureau of Primary Health Care, Health Resources and Services Administration, 5515 Security Lane, Suite 901, Rockville, MD 20852.

* * * * *

09–15–0007

SYSTEM NAME:

Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/BPHC.

Minor changes have been made to this system notice. The SYSTEM NAME and following categories should be revised:

* * * * *

STORAGE:

File folders, magnetic tape, disk or laser optical media, punch cards, and microfilm.

* * * * *

RETENTION AND DISPOSAL:

1. Former PHS Hospitals/Clinics: Destroyed 50 years after date of last treatment, *inactive medical records* for active duty uniformed service personnel and nonuniformed service personnel.

2. Gillis W. Long Hansen's Disease Center: Retained at facility—not transferred to a Federal Records Center. Destroyed, as appropriate, after 50 years, or when no longer needed for research purposes, as determined by the project leader or principal investigator.

SYSTEM MANAGER(S) AND ADDRESS:

Director, PHS Health Data Center, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

* * * * *

Appendix 1

* * * * *

B. Successor Organizations

Director, Homewood Hospital Center, Inc., 3100 Wyman Park Drive, Baltimore, MD 21211. Director, Brighton Marine Public Health Center, 77 Warren Street, Boston, MA 02135. Administrator, Lutheran Medical Center, 2609 Franklin Blvd., Cleveland, OH 44114. Director, Hospital of St. John, 2050 Space Park Drive, Nassau Bay, TX 77058. Administrator, Martins Point Health Center, 331 Veranda Street, Portland, ME 04103. Office-in-Charge, U.S. Army St. Louis

Outpatient Clinic, 1520 Market Street, St. Louis, MO 63103. Director, Pacific Medical Center, 1200 12th Avenue South, Seattle, WA 98144. Director, Baley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Island, NY 10304.

* * * * *

09–15–0008

SYSTEM NAME:

Emergency Non-PHS Treatment Authorization File, HHS/HRSA/BPHC.

Minor changes have been made to this system notice. The SYSTEM NAME and following categories should be revised:

* * * * *

SYSTEM LOCATION:

Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857.

Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Beneficiary Medical Programs, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–36, Rockville, MD 20857.

Chief, Medical Record Department Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

* * * * *

09–15–0026

SYSTEM NAME:

Medical Fellowships and Educational Loans, HHS/HRSA/OA.

Minor changes have been made to this system notice. The following category should be revised:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, General Accounting Branch, Division of Fiscal Services, Health Resources and Services Administration, 5600 Fishers Lane, Room 16–16, Rockville, MD 20857.

* * * * *

09–15–0028

SYSTEM NAME:

PHS Clinical Affiliation Trainee Records, HHS/HRSA/BPHC.

Minor changes have been made to this system notice. The SYSTEM NAME category should be revised.

* * * * *

09–15–0029

SYSTEM NAME:

PHS Beneficiary-Contract/Health Care Records, HHS/HRSA/BPHC.

Minor changes have been made to this system notice. The SYSTEM NAME and following categories should be revised:

* * * * *

SYSTEM LOCATION:

Division of Beneficiary Medical Programs, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–36, Rockville, MD 20857.

U.S. Public Health Service Health Data Center, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

Division of Commissioned Personnel, 5600 Fishers Lane, Room 4A–15, Rockville, MD 20857.

See Appendix 2 of system notice 09–15–0007, "Patients Medical Records System PHS Hospitals Clinics, HHS/HRSA/BPHC," for locations of Federal Records Centers.

* * * * *

RETENTION AND DISPOSAL:

Retained in the contracting professional's facility files until the contract is terminated and then turned over to the responsible PHS contracting officer for transmittal to a new contracting professional, to the Division of Commissioned Personnel, or storage at a Federal Records Center. When stored in a Federal Records Center, records are stored for 50 years after date of last treatment. Destruction at that time is in accordance with standard practices of the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Beneficiary Medical Programs, Bureau of Primary Health Care, 5600 Fishers Lane, Room 7–36, Rockville, MD 20857.

Director, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

* * * * *

09–15–0037

SYSTEM NAME:

Public Health Service (PHS) and National Health Service Corps (NHSC) Health Care Provider Records System, HHS/HRSA/BPHC.

Minor changes have been made to this system notice. The SYSTEM NAME category should be revised.

* * * * *

09–15–0039

SYSTEM NAME:

Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.

Minor changes have been made to this system notice. The following category should be revised:

* * * * *

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–34, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

* * * * *

09–19–0040

SYSTEM NAME:

Health Professions Student Loan Program, HHS/HRSA/BHPr.

Minor changes have been made to this system notice. The following category should be revised:

* * * * *

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services and Services Administration, 5600 Fishers Lane, Room 8–34, Rockville, MD 20857.

Division of Computer Research and Technology, National Institutes of Health, Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

09–15–0041

SYSTEM NAME:

Health Professions Student Loan Cancellation, HHS/HRSA/BHPr.

Minor changes have been made to this system notice. The following category should be revised:

* * * * *

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–34, Rockville, MD 20857.

* * * * *

09–15–0042

SYSTEM NAME:

Physician Shortage Area Scholarship Program, HHS/HRSA/BPHC.

Minor changes have been made to this system notice. The SYSTEM NAME and following categories should be revised:

* * * * *

SYSTEM LOCATION:

Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, 5600 Fishers Lane, Room 7–34, Rockville, MD 20857.

Division of Computer Research and Technology, National Institutes of

Health, Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

* * * * *

SAFEGUARDS:

1. Authorized Users: Administrative and staff personnel of the Division of Scholarships and Loan Repayments and other components of the Bureau of Primary Health Care who have responsibility for implementing the Program.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–34, Rockville, MD 20857.

* * * * *

09–15–0044

SYSTEM NAME:

Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.

Minor changes have been made to this system notice. The following category should be revised:

* * * * *

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–29, Rockville, MD 20857.

Records are also located at contractor sites. A list of contractor sites where individually identifiable data are currently located is available upon request to the System Manager.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

* * * * *

09–15–0056

SYSTEM NAME:

National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.

Minor changes have been made to this system notice. The following categories should be revised:

* * * * *

SYSTEM LOCATION:

Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), 6001 Montrose Road, Room 702, Rockville, MD 20852.

* * * * *

RETENTION AND DISPOSAL:

Closed case files are cut off at the end of each fiscal year, transferred to the Washington National Records Center, and destroyed six years after cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857.

* * * * *

09–15–0057

SYSTEM NAME:

Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BHPr.

Minor changes have been made to this system notice. The following category should be revised:

* * * * *

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–34, Rockville, MD 20857.

Division of Computer Research and Technology, National Institutes of Health, Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

* * * * *

[FR Doc. 92–26092 Filed 12–30–92; 8:45 am]

BILLING CODE 4160–15–M

Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: FDA is publishing this document in accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals."

SUPPLEMENTARY INFORMATION: FDA has completed the annual review of its systems of records and is publishing below (1) a table of contents which lists all active systems of records in FDA, and (2) these minor changes which affect the public's right or need to know.

Dated: October 23, 1992.

Gary E. Fendler,

Associate Commissioner for Public Affairs.

Table of Contents

09–10–0002 Regulated Industry Employee Enforcement Records, HHS/FDA/OC.
09–10–0003 FDA Credential Holder File, HHS/FDA/OC.
09–10–0004 Communications (Oral and Written) With the Public, HHS/FDA/OC.
09–10–0005 State Food and Drug Official File HHS/FDA/ORA.
09–10–0007 Science Advisor Research Associate Program (SARAP), HHS/FDA/ORA.
09–10–0008 Radiation Protection Program Personnel Monitoring System, HHS/FDA/CDRH.
09–10–0009 Special Studies and Surveys on FDA-Regulated Products, HHS/FDA/OM.
09–10–0010 Bioresearch Monitoring Information System, HHS/FDA.
09–10–0011 Certified Retort Operators, HHS/FDA/CFSAN.
09–10–0013 Employee Conduct Investigative Records, HHS/FDA/OM.
09–10–0015 Blood Donors for Tissue Typing Sera and Cell Analysis and Related Research, HHS/FDA/CBER.
09–10–0017 Epidemiological Research Studies of the Center for Devices and Radiological Health, HHS/FDA/CDRH.
09–10–0018 Employee Identification and Security Card Information Records, HHS/FDA/OC.

Minor alterations have been made to the following systems notices:

09–10–0003

SYSTEM NAME:

FDA Credential Holder File, HHS/FDA/OC.

The system location and system manager(s) portions have been revised to reflect current addresses and titles.

SYSTEM LOCATION:

FDA Employees:

Personal Property Management Section, Services Unit (HFA–227), Office of Management, 5600 Fishers Lane, Rockville, MD 20857
Metropolitan Office Services Unit (HFA–216), Office of Management, 200 C Street, SW, Washington, DC 20204
Division of Field Investigations (HFC–130), Office of Regulatory Affairs, 5600 Fishers Lane, Rockville, MD 20857

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see appendix A to system notice 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OC.

State and Local Employees:

Division of Federal-State Relations (HFC–151), 5600 Fishers Lane, Rockville, MD 20857

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see appendix A to system notice 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OC.

SYSTEM MANAGER(S) AND ADDRESS:

FDA Employees:

Chief, Services Unit (HFA–227), Office of Management, 5600 Fishers Lane, Rockville, MD 20857

Chief, Metropolitan Office Services Unit (HFA–216), Office of Management, 200 C Street, SW, Washington, DC 20204

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see appendix A to system notice 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OC.

Federal-State Officer at Field/District Offices. For the location of Field/District Offices, see appendix A to system notice 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OC.

State Employees:

Director, Division of Federal-State Relations (HFC–151), 5600 Fishers Lane, Rockville, MD 20857

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see appendix A to system notice 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OC.

09–10–0008

SYSTEM NAME:

Radiation Protection Program Personnel Monitoring System, HHS/FDA/CDRH.

The system location and system manager(s) portions have been revised to reflect current addresses and titles.

SYSTEM LOCATION:

Office of Health Physics (HFZ–60), Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857

Radiation Detection Company, 162 Wolfe Road, P.O. Box 3414, Sunnyvale, CA 94088

SYSTEM MANAGER(S) AND ADDRESSES:

Program Manager, U.S. P.H.S. Personnel Monitoring Program, Office of Health Physics (HFZ–60), Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857

09–10–0013

SYSTEM NAME:

Employee Conduct Investigative Records, HHS/FDA/OM.

The organizational symbols, system location and system manager(s) portions have been revised to reflect current titles and addresses.

SYSTEM LOCATION:

Division of Ethics and Program Integrity (HFA–20), Office of Management, 12420 Parklawn Drive, Rockville, MD 29857

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Division of Ethics and Program Integrity (HFA–20), Office of Management, 5600 Fishers Lane, Rockville, MD 20857

09–10–0018

SYSTEM NAME:

Employee Identification and Security Card Key Records, HHS/FDA/OC.

The system notice has been revised to reflect the inclusion of Security Card Key records and is being republished in its entirety.

09–10–0018

SYSTEM NAME:

Employee Identification and Security Card Key Records, HHS/FDA/OC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Personal Property Management Section, Services Unit (HFA–227), 5600 Fishers Lane, Rockville, MD 20857

Metropolitan Office Services Unit (HFA–216), 200 C Street SW, Washington, DC 20204

Physical Security Staff (HFA–204), 5600 Fishers Lane, Rockville, MD 20857

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see appendix A to System Notice 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Approximately 8,000 FDA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, mail routing code, office telephone number, building, room number, birthdate, sex, identification photograph, height, weight, color of eyes, color of hair, and type of appointment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 471, et seq; Management and Disposal of Government Property Act.

PURPOSE(S):

The system is designed to maintain a record of all holders of FDA identification cards and security card keys, Forms HHS 576 (FDA employees only) FDA 2923, and FDA 3391, for renewal and recovery purposes and to identify numbers of lost or stolen cards. The system may also be used at FDA Headquarters to locate employees whose names have not been entered in the FDA locator system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Forms filed in folders in a locked filing cabinet. Computer tapes and discs stored in a locked safe.

RETRIEVABILITY:

Information is filed and retrieved by name and date of birth.

SAFEGUARDS:

1. *Authorized users:* Authorized FDA personnel whose official duties require access for issuance, renewal, retrieval, and location purposes.

2. *Physical safeguards:* Records are kept in locked file cabinets and on

minicomputers at Headquarters and are maintained in secured areas. Computer discs and tapes are stored in locked safes.

3. *Procedural (or technical) safeguards:* Computer software providing restricted commands.

4. *Implementation guidelines:* Safeguards are established in accordance with Chapter 45–13 and PHS hf:45–13 of the Department's General Administration Manual and Part 6 of the Department's ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are maintained as long as the cards are valid. Computer tapes are erased immediately upon termination of employment and inactive forms are destroyed after 6 months by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Branch (HFA–210), 5600 Fishers Lane, Rockville, MD 20857

Chief, Physical Security Staff (HFA–204), 5600 Fishers Lane, Rockville, MD 20857

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought, and provide any other names officially used during period of employment. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92–26154 Filed 12–30–92; 8:45 am]

BILLING CODE 4160–01–M

federal register

Thursday
December 31, 1992

Part IV

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment. Notice of hearing.

SUMMARY: The Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. The proposed amendments and a synopsis of issues to be addressed are set forth below. The Commission may report amendments to the Congress on or before May 1, 1993. Comment is sought on all proposals, alternative proposals, and any other aspect of the sentencing guidelines, policy statements, and commentary.

DATES: The Commission has scheduled a public hearing on these proposed amendments for March 22, 1993, at 9:30 a.m. at the Ceremonial Courtroom, United States Courthouse, 3d and Constitution Avenue, NW., Washington, DC 20001.

Anyone wishing to testify at this public hearing should notify Michael Courlander, Public Information Specialist, at (202) 273–4590 by March 1, 1993.

Public comment, as well as written testimony for the hearing, should be received by the Commission no later than March 15, 1993, in order to be considered by the Commission in the promulgation of amendments due to the Congress by May 1, 1993.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered under 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to review and revise periodically guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994 (o), (p).

Ordinarily, the Administrative Procedure Act rule-making requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the Administrative Procedure Act rule-making provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

The proposed amendments are presented in one of three formats. First, the majority of the amendments are proposed as specific revisions of a guideline, policy statement, or commentary. Second, for some amendments, the Commission has published alternative methods of addressing an issue. Commentators are encouraged to state their preference among listed alternatives or to suggest a new alternative. Third, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language.

Section 1B1.10 of the United States Sentencing Commission Guidelines Manual sets forth the Commission's policy statement regarding retroactivity of amended guideline ranges. Comment is requested as to whether any of the proposed amendments should be made retroactive under this policy statement.

Although the amendments below are specifically proposed for public comment and possible submission to the Congress by May 1, 1993, the Commission emphasizes that it welcomes comment on any aspect of the sentencing guidelines, policy statements, and commentary, whether or not the subject of a proposed amendment.

The amendments below are derived from a variety of sources including: Monitoring and hotline data, case law review, and the recommendations of the Judicial Conference of the United States, the Department of Justice, the Internal Revenue Service, the U.S. Postal Service, the Federal Defenders, the Commission's Practitioners' Advisory Group, the American Bar Association Sentencing Guidelines Committee, individual judges, probation officers, attorneys, and others.

As a resource when considering the proposed amendments, working group reports prepared by Commission staff are available for inspection at Commission offices or off-site duplication. The reports contain empirical and legal sentencing research focusing on (1) money laundering offenses; (2) economic ("white collar") offenses; (3) the Commission's drug guidelines; and (4) violent offenses. Contact the Commission's public information officer at (202) 273–4590 for details.

Note: The Commission agreed to publish, upon request of a single Commissioner, any proposal or issue for comment, including all proposals submitted from sources outside the Commission. Therefore, publication of an amendment for comment does not necessarily indicate that the Commission or any individual Commissioner has formed a view on the merits of the proposed amendment.

Authority: 28 U.S.C. 994 (a), (o), (p), (x).

William W. Wilkins, Jr.,

Chairman.

§ 1B1.3. Relevant Conduct

1. *Synopsis of Proposed Amendment:* This amendment revises § 1B1.3 (Relevant Conduct) to provide that conduct of which the defendant has been acquitted after trial shall not be considered in determining the defendant's offense level but may, in an exceptional case, provide a basis for an upward departure. (Related amendment proposals: 34 and 35).

Proposed Amendment: Section 1B1.3 is amended by inserting the following additional subsection:

> "(c) Conduct of which the defendant has been acquitted after trial shall not be considered under this section.".

The Commentary to § 1B1.3 captioned "Application Notes" is amended by inserting the following additional note:

> "11. Subsection (c) provides that conduct of which the defendant has been acquitted after trial shall not be considered in determining the offense level under this section. In an exceptional case, however, such conduct may provide a basis for an upward departure.".

§ 1B1.11. Use of Guidelines Manual in Effect on Date of Sentencing

2. *Synopsis of Proposed Amendment:* This amendment expands policy statement § 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing) to address what has become a frequently asked hotline question and troublesome application issue—the application of amended guidelines to multiple count cases in which the effective date of guideline revision(s) occur between offenses of conviction. The issue has also produced litigation before several appellate courts. See *United States* v. *Castro*, 972 F.2d 1107, reh'g denied (Aug. 17, 1992); *United States* v. *Seligsohn*, No. 91–2100 (3d Cir. Dec. 9, 1992) (1992 U.S. App. LEXIS 32183). The proposed amendment extends the Commission's "one book" rule to multiple count cases and provides a basic rationale for the policy.

Proposed Amendment: Section 1B1.11(b) is amended by inserting the following additional subdivision:

"(3) If the defendant is convicted of two offenses, the first committed before, and the second after, a revised edition of the Guidelines Manual became effective, the revised edition of the Guidelines Manual is to be applied to both offenses, even if the revised edition of the Guidelines Manual results in an increased penalty for the first offense.".

The Commentary to § 1B1.11 captioned "Background" is amended by inserting the following additional sentence as the first sentence of the first paragraph:

"Subsections (a) and (b)(1) provide that the court should apply the Guidelines Manual in effect on the date the defendant is sentenced unless the court determines that doing so would violate the ex post facto clause in Article I, § 9 of the United States Constitution.";

and by inserting the following additional paragraphs:

"Subsection (b)(2) provides that the Guidelines Manual in effect on a particular date shall be applied in its entirety.

Subsection (b)(3) provides that where the defendant is convicted of two offenses, the first committed before, and the second after, a revised edition of the Guidelines Manual became effective, the revised edition of the Guidelines Manual is to be applied to both offenses, even if the revised edition results in an increased penalty for the first offense. Because the defendant completed the second offense after the amendment to the guidelines took effect, the ex post facto clause does not prevent determining the sentence for that count based on the amended guidelines. For example, if a defendant pleads guilty to a single count of embezzlement that occurred after the most recent edition of the Guidelines Manual became effective, the guideline range applicable in sentencing will encompass any relevant conduct (e.g., related embezzlement offenses that may have occurred prior to the effective date of the guideline amendments) for the offense of conviction. The same would be true for a defendant convicted of two counts of embezzlement, one committed before the amendments were enacted, and the second after. In this example, the ex post facto clause would not bar application of the amended guideline to the first conviction; a contrary conclusion would mean that such defendant was subject to a lower guideline range than if convicted only of the second offense. Decisions from several appellate courts addressing the analogous situation of the constitutionality of counting pre-guidelines criminal activity as relevant conduct for a guidelines sentence support this approach. See United States v. Ykema, 887 F.2d 697 (6th Cir. 1989) (upholding inclusion of pre-November 1, 1987, drug quantities as relevant conduct for the count of conviction, noting that habitual offender statutes routinely augment punishment for an offense of conviction based on acts committed before a law is passed); United States v. Allen, 886 F.2d 143 (8th Cir. 1989); United States v. Cusack, 901 F.2d 29 (4th Cir. 1990). Moreover, this approach should be followed regardless of whether the offenses of conviction are the type in which the conduct is grouped under § 3D1.2(d). The ex post facto clause does not distinguish between groupable and nongroupable offenses, and unless that clause would be violated, Congress' directive to apply the sentencing guidelines in effect at the time of sentencing must be followed. Under the guideline sentencing system, a single sentencing range is determined based on the defendant's overall conduct, even if there are multiple counts of conviction (see §§ 3D1.1–3D1.5, 5G1.2). Thus, if a defendant is sentenced in January 1992 for a bank robbery committed in October 1988 and one committed in November 1991, the November 1991 Guidelines Manual should be used to determine a combined guideline range for both counts. See generally United States v. Stephenson, 921 F.2d 438 (2d Cir. 1990) (holding that the Sentencing Commission and Congress intended that the applicable version of the guidelines be applied as a "cohesive and integrated whole" rather than in a piecemeal fashion). Consequently, even in a complex case involving multiple counts that occurred under several different versions of the Guidelines Manual, it should not be necessary to compare more than two manuals to determine the applicable guideline range—the manual in effect at the time the last offense was completed and the one in effect at the time of sentencing.".

§ 1B1.12 (Proposed New Policy Statement)

3. *Synopsis of Proposed Amendment:* This amendment adds a policy statement to Chapter One, Part B (Application Instructions) addressing the determination of the maximum imposable sentence in the case of a juvenile delinquent. The Supreme Court's decision in United States v. R.L.C., 112 S. Ct. 1329 (1992), requires calculation of the guideline range in order to determine the maximum sentence imposable on a juvenile delinquent.

Proposed Amendment: Chapter One, Part B, is amended by inserting at the end:

"§ 1B1.12. Persons Sentenced Under the Federal Juvenile Delinquency Act (Policy Statement)

(a) The sentencing guidelines do not apply to a defendant sentenced under the Federal Juvenile Delinquency Act (18 U.S.C. 5031–5042). However, the sentence imposed upon a juvenile delinquent may not exceed the maximum of the guideline range applicable to an otherwise similarly situated adult defendant unless the court finds aggravating factor(s) sufficient to warrant an upward departure from that guideline range. United States v. R.L.C., 112 S. Ct. 1329 (1992). Therefore, it is necessary to determine the guideline range that would be applicable to a similarly situated adult defendant.".

Section 5H1.1 is amended by deleting the last paragraph as follows:

"The guidelines are not applicable to a person sentenced as a juvenile delinquent under the provisions of 18 U.S.C. 5037.".

§ 2A4.2. Demanding or Receiving Ransom Money

4. *Synopsis of Proposed Amendment:* Section 2A4.2 (Demanding or Receiving Ransom Money) currently provides a single offense level to cover a wide variety of conduct. This amendment revises this guideline to better differentiate the types of conduct covered.

Proposed Amendment: Section 2A4.2 is amended in the title by inserting at the end "For Kidnapped Person".

Section 2A4.2 is amended by inserting the following additional subsections:

"(b) Specific Offense Characteristic

(1) If the amount of the ransom demanded exceeded $10,000, increase by the corresponding number of levels from the table in § 2B3.1(b)(6).

(c) Cross Reference

(1) If the defendant was a participant in the kidnapping offense, apply § 2A4.1 (Kidnapping; Abduction; Unlawful Restraint).

(d) Special Instruction

If the offense involved receiving or possessing ransom money, but the defendant was not a participant in the kidnapping or demand for ransom offense (i.e., the defendant's conduct was tantamount to that of an accessory after the fact to the kidnapping or ransom demand offense), do not apply this guideline. Instead, apply § 2X3.1 (Accessory After the Fact) in respect to the underlying offense.".

The Commentary to § 2A4.2 is amended by inserting the following immediately before "Background".

"*Application Note:*

1. A 'participant' is a person who is criminally responsible for the commission of the offense, but need not have been convicted.".

The Commentary to § 2A4.2 captioned "Background" is amended by deleting the text as follows:

"This section specifically includes conduct prohibited by 18 U.S.C. § 1202, requiring that ransom money be received, possessed, or disposed of with knowledge of its criminal origins. The actual demand for ransom under these circumstances is reflected in § 2A4.1. This section additionally includes extortionate demands through the use of the United States Postal Service, behavior proscribed by 18 U.S.C. 876–877.",

and inserting in lieu thereof:

"This section addresses a variety of criminal behavior involving the demand or receipt of ransom for a kidnapped person. If the defendant was a participant in the demand for ransom offense, but was not a participant in the kidnapping offense (e.g., a defendant learns that a kidnapping has occurred and attempts to obtain ransom money by pretending to be the kidnapper), the offense level will be determined under subsection (a) and (b)(1) of this guideline. If the defendant was a participant in the kidnapping offense, the cross reference at subsection (c)(1) will apply. If the offense involved receiving or possessing ransom money, but the defendant was not a participant in the kidnapping or demand for ransom (i.e., where the defendant's conduct was that of an accessory after the fact to the kidnapping or ransom demand offense), subsection (d)(1) provides for the application of § 2X3.1 (Accessory after the Fact) in respect to the kidnapping or ransom demand offense, as appropriate.".

Chapter Two, Part B—Offenses Involving Property

Chapter Two, Part F—Offenses Involving Fraud or Deceit

Chapter Two, Part T—Offenses Involving Taxation

5. *Synopsis of Proposed Amendment:* The Commission is considering amendments to certain fraud, theft, and tax guidelines as they relate to loss and the treatment of the specific offense characteristic for more than minimal planning. The proposed amendment shown below illustrates one method of addressing these issues.

This amendment eliminates "more than minimal planning" as a specific offense characteristic from §§ 2B1.1, 2B1.2, and 2F1.1 in order to increase uniformity of application in respect to offenses involving this characteristic. The amendment also modifies the loss tables in §§ 2B1.1 and 2F1.1 to incorporate gradually an increase for "more than minimal planning" with a two-level increase reached for loss amounts greater than $40,000. In addition to the phasing-in of the increase for "more than minimal planning, this amendment also modifies the loss tables in §§ 2B1.1 and 2F1.1 by providing a more uniform rate of increase in the loss increments and by increasing the offense levels for cases that involve extremely high loss amounts, consistent with recent statutory increases in the maximum imprisonment sentences for certain cases sentenced under §§ 2B1.1 and 2F1.1. This amendment also creates a table in § 2F1.2 that starts at a higher amount in order to maintain approximately the same Chapter Two offense levels for guidelines that apply the loss table in § 2F1.1 but start with a higher base offense level. Finally, the amendment modifies the tax loss table in § 2T4.1 to conform with the changes in the loss tables in §§ 2B1.1 and 2F1.1 and eliminates the specific offense characteristics in Part T relating to the use of sophisticated means to impede discovery of the nature or extent of the offense, consistent with the elimination of "more than minimal planning" as a specific offense characteristic.

Proposed Amendment: Section 2B1.1(b) is amended by deleting subsection (b)(5) as follows:

"(5) If the offense involved more than minimal planning, increase by 2 levels.";

by renumbering subsection (b)(6) and (b)(7) as (b)(5) and (b)(6), respectively; and by deleting subsection (b)(1) and inserting in lieu thereof the following:

"(1) If the loss exceeded $600, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) $600 or less	No increase.
(B) More than $600	Add 1.
(C) More than $1,000	Add 2.
(D) More than $1,700	Add 3.
(E) More than $3,000	Add 4.
(F) More than $5,000	Add 5.
(G) More than $8,000	Add 6.
(H) More than $13,500	Add 7.
(I) More than $23,500	Add 8.
(J) More than $40,000	Add 9.
(K) More than $70,000	Add 10.
(L) More than $120,000	Add 11.
(M) More than $200,000	Add 12.
(N) More than $325,000	Add 13.
(O) More than $550,000	Add 14.
(P) More than $950,000	Add 15.
(Q) More than $1,500,000	Add 16.
(R) More than $2,500,000	Add 17.
(S) More than $4,500,000	Add 18.
(T) More than $8,000,000	Add 19.
(U) More than $13,500,000	Add 20.
(V) More than $23,500,000	Add 21.
(W) More than $40,000,000	Add 22.
(X) More than $70,000,000	Add 23.
(Y) More than $120,000,000	Add 24."

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by deleting " 'More than minimal planning,' ", by deleting the comma after "firearm", and by capitalizing the initial "f" in " 'firearm' "; and by deleting Note 13.

The Commentary to § 2B1.1 captioned "Background" is amended by deleting the second sentence of the first paragraph and the second paragraph.

Section 2B1.2(b)(4) is amended by deleting "(A)" and by deleting "; or (B) If the offense involved more than minimal planning, increase by 2 levels"; and by deleting "4" and inserting in lieu thereof "2".

The Commentary to § 2B1.2 captioned "Application Notes" is amended in Note 1 by deleting " 'More than minimal planning,' ", by deleting the comma after "firearm", and by capitalizing the initial "f" in " 'firearm' ".

Section 2B1.3(b) is amended by deleting subsection (3) as follows:

"If the offense involved more than minimal planning, increase by 2 levels.".

The Commentary to § 2B1.3 captioned "Application Notes" is amended by deleting Note 1, and by renumbering the remaining Notes.

Sections 2B3.3(b)(1) and, 2B4.1(b)(1) are amended by deleting "$2,000" and inserting in lieu thereof "$5,000", and by deleting "§ 2F1.1" and inserting in lieu thereof in each instance "§ 2F1.2 (Insider Trading)".

Sections 2B5.1 and 2B6.1(b)(1) are amended by deleting $2,000" and inserting in lieu thereof in each instance "$5,000", and by deleting "§ 2F1.1 (Fraud and Deceit)" and inserting in lieu thereof in each instance "§ 2F1.2 (Insider Trading)".

Section 2F1.1(b) is amended by deleting subdivision (2), by renumbering the remaining subdivisions, and by deleting subdivision (1) and inserting in lieu thereof the following:

"(1) If the loss exceeded $1,700, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) $1,700 or less	No increase.
(B) More than $1,700	Add 1.
(C) More than $3,000	Add 2.
(D) More than $5,000	Add 3.
(E) More than $8,000	Add 4.
(F) More than $13,500	Add 5.
(G) More than $23,500	Add 6.
(H) More than $40,000	Add 7.
(I) More than $70,000	Add 8.
(J) More than $120,000	Add 9.
(K) More than $200,000	Add 10.
(L) More than $325,000	Add 11.
(M) More than $550,000	Add 12.
(N) More than $950,000	Add 13.
(O) More than $1,500,000	Add 14.
(P) More than $2,500,000	Add 15.
(Q) More than $4,500,000	Add 16.
(R) More than $8,000,000	Add 17.
(S) More than $13,500,000	Add 18.
(T) More than $23,500,000	Add 19.
(U) More than $40,000,000	Add 20.
(V) More than $70,000,000	Add 21.
(W) More than $120,000,000	Add 22."

The Commentary to § 2F1.1 captioned "Application Notes" is amended at Note 1 by deleting "§ 2F1.1(b)(3)" and by inserting in lieu thereof "§ 2F1.1(b)(2)"; by deleting Notes 2 and 3; and by renumbering Notes 4 through 18 as Notes 2 through 16.

The Commentary to § 2F1.1 captioned "Background" is amended by deleting the second and third paragraphs in their entirety.

Section 2F1.2 is amended by deleting subsection (b)(1) and inserting in lieu thereof the following:

"(1) If the gain exceeded $5,000, increase the offense level as follows:

Amount (apply the greatest)	Increase in level
(A) $5,000 or less	No increase.
(B) More than $5,000	Add 1.
(C) More than $8,000	Add 2.
(D) More than $13,500.	Add 3.
(E) More than $23,500	Add 4.
(F) More than $40,000	Add 5.
(G) More than $70,000	Add 6.

Amount (apply the greatest)	Increase in level
(H) More than $120,000	Add 7.
(I) More than $200,000	Add 8.
(J) More than $325,000	Add 9.
(K) More than $550,000	Add 10.
(L) More than $950,000	Add 11.
(M) More than $1,500,000	Add 12
(N) More than $2,500,000	Add 13.
(O) More than $4,500,000	Add 14.
(P) More than $8,000,000	Add 15.
(Q) More than $13,500,000	Add 16.
(R) More than $23,500,000	Add 17.
(S) More than $40,000,000	Add 18.
(T) More than $70,000,000	Add 19.
(U) More than $120,000,000	Add 20."

Section 2T1.1(b) is amended by deleting "Characteristics" and inserting in lieu thereof "Characteristic", and by deleting subdivision (b)(2).

Section 2T1.2(b) is amended by deleting "Characteristics" and inserting in lieu thereof "Characteristic", and by deleting subdivision (b)(2).

Section 2T1.3(b) is amended by deleting "Characteristics" and inserting in lieu thereof "Characteristic", and by deleting subdivision (b)(2).

Section 2T1.4(b) is amended by deleting "Characteristics" and inserting in lieu thereof "Characteristic", by deleting subdivision (b)(2), and by renumbering (b)(3) as (b)(2).

Section 2T3.1 is amended by deleting subsection (b).

Section 2T4.1 is amended by deleting:

"Tax loss (apply the greatest)	Offense level
(A) $2,000 or less	6
(B) More than $2,000	7
(C) More than $5,000	8
(D) More than $10,000	9
(E) More than $20,000	10
(F) More than $40,000	11
(G) More than $70,000	12
(H) More than $120,000	13
(I) More than $200,000	14
(J) More than $350,000	15
(K) More than $500,000	16
(L) More than $800,000	17
(M) More than $1,500,000	18
(N) More than $2,500,000	19
(O) More than $5,000,000	20
(P) More than $10,000,000	21
(Q) More than $20,000,000	22
(R) More than $40,000,000	23
(S) More than $80,000,000	24.",

and by inserting in lieu thereof the following:

"Tax loss (apply the greatest)	Offense level
(A) $1,700 or less	6
(B) More than $1,700	7
(C) More than $3,000	8
(D) More than $5,000	9
(E) More than $8,000	10
(F) More than $13,500	11
(G) More than $23,500	12
(H) More than $40,000	13
(I) More than $70,000	14
(J) More than $120,000	15
(K) More than $200,000	16
(L) More than $325,000	17
(M) More than $550,000	18
(N) More than $950,000	19
(O) More than $1,500,000	20
(P) More than $2,500,000	21
(Q) More than $4,500,000	22
(R) More than $8,000,000	23
(S) More than $13,500,000	24
(T) More than $23,500,000	25
(U) More than $40,000,000	26
(V) More than $70,000,000	27
(W) More than $120,000,000	28."

Additional Issues for Comment: The Commission invites comment on whether any of the following amendments should be made in lieu of the proposed amendment illustrated above: Should the Commission amend §§ 2B1.1, 2B1.2, 2F1.1 (and other guidelines containing an enhancement for more than minimal planning) to: (a) Increase the base offense level of each by two levels; (b) delete the specific offense characteristic for more than minimal planning (and, for § 2F1.1, the alternative enhancement for a scheme to defraud more than one victim); and (c) adopt a specific offense characteristic that provides that if the offense involved a single, opportunistic act (explained in the commentary as conduct undertaken on the spur of the moment in response to temptation or sudden opportunity), a two-level decrease may be given? Or, in the alternative, should the Commission amend the definition of "more than minimal planning" in § 1B1.1(f) to: (a) Delete the references to repeated acts; and/or (b) delete the references to concealment; and/or (c) define the planning necessary to establish the enhancement as "extensive or sophisticated planning"; and/or (d) set forth more examples of the application of the definition of "more than minimal planning" in fraud and theft cases?

In addition, the Commission invites comment on the following questions: (A) Do the loss tables in § 2B1.1 and/or § 2F1.1 and/or § 2T4.1 provide appropriate and adequate punishment for the loss categories included; (B) Should the offense levels in the loss table increase at a different rate (e.g., increasing the loss amounts by multiples of 1.5, 1.6, or 1.7, or some other pattern of mathematical increases); (C) Should there be fewer offense level gradations at the lower end of the loss table; and (D) Should there be additional offense level increases at higher loss amounts to provide further distinctions among, and increased punishment for, such offenses?

6. *Synopsis of Proposed Amendment*: This amendment expands the Commentary to § 2F1.1 (Fraud and Deceit) to provide guidance in cases in which the monetary loss does not adequately reflect the seriousness of the offense. (Related amendment proposals: 7, 37 and 65).

Proposed Amendment: The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 10 by inserting ", or the fraud caused substantial non-monetary harm" immediately following "non-monetary"; and by inserting the following additional paragraph as the second paragraph:

> "For example, a departure under this provision might be warranted in the case of a fraudulent blood bank operation that failed to preserve the donors' blood. Such an offense might cause substantial harm to numerous victims that is not adequately taken into account by the total monetary loss, which might be comparatively small.".

7. *Issue for Comment*: The Commission invites comment on whether the commentary to § 2B1.1, § 2B1.2, and § 2F1.1 should be amended to identify circumstances in which loss does not fully capture the harmfulness and seriousness of the conduct and therefore an upward departure may be warranted (e.g., when some of the harm caused by the offense was nonmonetary; the offense caused particularly significant emotional trauma to, or consciously or recklessly endangered the solvency of, one or more victims; the defendant knowingly or recklessly endangered the health or safety of one or more persons; the offense involved the risk of death; or the offense involved the knowing or reckless risk of serious bodily injury or death to more than one person).

The Commission further invites comment on whether any or all of the circumstances described above (or others bearing on whether loss reflects the seriousness of the offense) should be adopted as specific offense characteristics that provide for one-level or two-level increases instead of an invited upward departure. (Related amendment proposals: 6, 37 and 65).

§ 2D1.1 Unlawful manufacturing, importing, exporting, or trafficking (including possession with intent to commit these offenses); attempt or conspiracy

8. *Synopsis of Proposed Amendment:* This amendment has two parts. First, it provides a ceiling in the drug trafficking guideline (§ 2D1.1) for defendants who receive a mitigating role adjustment under § 3B1.2 (Mitigating Role). Second, the commentary to § 3B1.2 is revised to more clearly describe cases in which a mitigating role adjustment is warranted,

as well as to differentiate better between different degrees of mitigating role.

Commentators have argued that the guidelines over-punish certain lower-level defendants when the sentence is driven in large part by the quantity of drugs involved in the offense. For such lower-level defendants, the quantity of drugs involved is often opportunistic and may be a less appropriate measure of the seriousness of the offense than when the defendant has assumed a mid-level or higher role.

The proposed ceiling on drug quantity would limit the impact quantity would play at very high offense levels in determining the sentence of a low-level defendant who receives a mitigating role adjustment. Revisions to the Commentary of § 3B1.2 seek to ensure a more clear, concise definition of the defendant who merits a mitigating role reduction and provide greater consistency in application. (Related amendment proposals: 9, 39, 48, and 60).

Proposed Amendment: Section § 2D1.1(a)(3) is amended by inserting the following additional sentence at the end:

"Provided, that if the defendant qualifies for a mitigating role adjustment under § 3B1.2 (Mitigating Role), the base offense level shall not be greater than level 32.".

The Commentary to § 3B1.2 captioned "Application Notes" is amended by deleting Notes 1–4 and inserting in lieu thereof:

"1. This section provides a downward adjustment in offense level for a defendant who has a minimal role (4-level reduction) or a minor role (2-level reduction) in the criminal activity for which the defendant is accountable under § 1B1.3 (Relevant Conduct). In cases falling between (a) and (b), a 3-level reduction is provided. One factor that determines whether a defendant warrants a mitigating role is the defendant's role and relative culpability in comparison with the other participants in the criminal activity for which the defendant is accountable pursuant to § 1B1.3 (Relevant Conduct). The fact that the conduct of one participant warrants an upward adjustment for an aggravating role (§ 3B1.1) or warrants no adjustment, does not necessarily mean that another participant must be assigned a downward adjustment for a mitigating role. "Participant" is defined in the Commentary to § 3B1.1 (Aggravating Role).

2. This section does not apply if the defendant possessed a firearm, had ready access to a firearm, or directed or induced another participant to possess a firearm in connection with the criminal activity.

3. Subsection (a) (4-level reduction) applies to a defendant who plays a minimal role in the criminal activity. To qualify for a minimal role adjustment under subsection (a), the defendant must be one of the least culpable of the participants in the criminal activity. Such defendants ordinarily must have all of the characteristics consistent with a mitigating role listed in Application Note 6 below. In addition, although not determinative, a defendant's lack of knowledge or understanding of the scope and structure of the criminal activity and of the activities of others may be indicative of a minimal role (4-level reduction).

4. To qualify for a minor role adjustment under subsection (b) (2-level reduction), the defendant must be one of the less culpable participants in the criminal activity, but have a role that cannot be described as minimal.

5. The following is a non-exhaustive list of characteristics that ordinarily are associated with a mitigating role:

(a) the defendant performed only unskilled and unsophisticated tasks;

(b) the defendant had no decision-making authority or responsibility;

(c) total compensation to the defendant was small in amount, generally in the form of a flat fee; and

(d) the defendant did not exercise any supervision over other participant(s).

6. With regard to offenses involving contraband (including controlled substances), a defendant who

(a) sold, or played a substantial part in negotiating the terms of the sale of, the contraband;

(b) had an ownership interest in any portion of the contraband; or

(c) financed any aspect of the criminal activity

shall not receive a mitigating role adjustment below the Chapter Two offense level that the defendant would have received for the quantity of contraband that the defendant sold, negotiated, or owned, or for that aspect of the criminal activity that the defendant financed because, with regard to those acts, the defendant has acted as neither a minimal nor a minor participant. For example, a retail-level drug dealer who sells 100 grams of cocaine and who is held accountable under § 1B1.3 (Relevant Conduct) for only that quantity shall not be considered for a mitigating role adjustment. In contrast, a retail-level drug dealer who sells 100 grams of cocaine, but who is held accountable, pursuant to § 1B1.3, for a jointly undertaken criminal activity involving 5 kilograms of cocaine may, if otherwise qualified, be considered for a mitigating role adjustment, but the resulting offense level may not be less than the Chapter Two offense level for the 100 grams of cocaine that the defendant sold.

7. A defendant who is entrusted with a quantity of contraband for purposes of transporting such contraband (e.g., a courier or mule, not an offloader or deckhand),

[Option 1—shall not receive a minimal role (4-level) adjustment for that quantity of contraband that the defendant transported. If such a defendant otherwise qualifies for a role adjustment, consideration may be given to a minor role (2-level) adjustment.]

[Option 2—shall not receive a minimal role (4-level) adjustment for that quantity of contraband that the defendant transported. Consideration may be given to a minor role (2-level) adjustment, if the defendant establishes that he transported contraband on a single occasion, that he neither sold nor had an ownership interest in any portion of the contraband, and that he otherwise qualifies for a role adjustment (see, e.g., notes 6 and 7).]

[Option 3—shall not receive a mitigating role adjustment for that quantity of contraband that the defendant transported.]

8. Consistent with the structure of the guidelines, the defendant bears the burden of persuasion in establishing entitlement to a mitigating role adjustment. In determining whether a mitigating role adjustment is warranted, the court should consider all available facts, including any information arising from the circumstances of the defendant's arrest that may be relevant to a determination of the defendant's role in the offense. In making a determination as to whether the defendant had a mitigating role in the offense, a court may consider a defendant's assertion of facts concerning his role but, as in similar contexts, determinations of credibility are the province of the court.".

The Commentary to § 3B1.2 captioned "Background" is amended by deleting the first sentence.

9. *Synopsis of Proposed Amendment:* This amendment reduces the upper limit of the Drug Quantity Table from level 42 to level 36 (the upper limit in the original edition of the Guidelines Manual). In addition, this amendment adds specific offense characteristics that further reflect defendant culpability and risk of harm associated with certain offense behavior. As a further measure of distinguishing the seriousness of the offense, a cross reference to Chapter Two, Part A is added where death or bodily injury resulted from the offense conduct. (Related amendment proposals: 8, 39, and 48).

Proposed Amendment: Section 2D1.1(b) is amended by deleting subdivision 1 and by inserting in lieu thereof the following:

"(1) (If more than one applies, use the greatest):

(A) If a firearm was discharged or a substantial risk of death or serious bodily injury was otherwise created, increase by 6 levels.

(B) If a dangerous weapon (including a firearm), was otherwise used, increase by 4 levels.

(C) If a dangerous weapon (including a firearm) was brandished, displayed, or possessed, increase by 2 levels.

(2) If the offense involved five or more participants and the defendant was the principal organizer or leader of the criminal activity or was one of several such principal organizers or leaders, increase as follows based on the number of participants involved in the criminal activity:

Number of other participants	Increase in level
(i) At least 5 but less than 15	Add 4.

Number of other participants	Increase in level
(ii) At least 15 but less than 50	Add 6; or
(iii) 50 or more	Add 8.

> If this subdivision is applicable, do not apply § 3B1.1 (Aggravating Role).
>
> (3) If the defendant did not own or sell the drugs, did not exercise decision-making authority, did not finance the operation, and did not use relevant special skills, decrease by 4 levels.
>
> Provided, however, that this subdivision is not to be applied if an increase has been made under subdivision (b)(1), or the defendant has been convicted of 18 U.S.C. § 924(c).
>
> If this subdivision is applicable, do not apply § 3B1.2 (Mitigating Role).";

and by renumbering the remaining subdivisions accordingly.

Section 2D1.1(c) is amended by deleting subdivisions 1–4; by inserting in lieu thereof the following:

> "(1) 10 KG or more of Heroin—Level 36 (or the equivalent amount of other Schedule I or II Opiates);
>
> 50 KG or more of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
>
> 500 G or more of Cocaine Base;
>
> 10 KG or more of PCP, or 1 KG or more of PCP (actual);
>
> 10 KG or more of Methamphetamine, or 1 KG or more of Methamphetamine (actual), or 1 KG or more of "Ice";
>
> 100 G or more of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
>
> 4 KG or more of Fentanyl;
>
> 1 KG or more of a Fentanyl Analogue;
>
> 10,000 KG or more of Marihuana;
>
> 2,000 KG or more of Hashish;
>
> 200 KG or more of Hashish Oil.";

and by renumbering the remaining subdivisions accordingly.

Section 2D1.1 is amended by inserting the following additional subsection:

> "(d) Cross Reference
>
> (1) If the offense resulted in death or bodily injury, apply the appropriate guideline from Chapter Two, Part A (Offenses Against the Person), if the resulting offense level is greater than the offense level determined above.".

10. *Synopsis of Proposed Amendment:* This amendment is intended to resolve the split among the circuits as to the meaning of the term "mixture or substance," as used in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) by expressly providing that this term does not include uningestible, unmarketable portions of a drug mixture. This issue has arisen, subsequent to the United States Supreme Court decision in *Chapman* v. *United States*, 111 S. Ct. 1919 (1991), in two types of cases. The first type of case involves a controlled substance bonded to, or suspended in, another substance; however, the controlled substance is not usable until it is separated from the other substance. Examples include cocaine suspended in cream liqueur or cocaine mixed with beeswax. The second type of case involves the waste produced from an illicit laboratory used to manufacture a controlled substance, or chemicals confiscated before the chemical processing of the controlled substance is completed. The waste product is typically water or chemicals used to either remove impurities or form a precipitate (the precipitate, in some cases, being the controlled substance). Typically, a small amount of controlled substance remains in the waste water; often this amount is too small to quantify and is listed as a trace amount (no weight given) in DEA reports. In these types of cases, the waste product is not consumable. The chemicals seized before the end of processing are also not usable in that form because further processing must take place before they can be used. (Related amendment proposal: 49).

Proposed Amendment: The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 1 by inserting the following at the end:

> "Mixture or substance does not include uningestible, unmarketable portions of drug mixtures; i.e., materials that have to be separated from the controlled substance before the controlled substance can be used. Examples of such materials include the creme liqueur in a cocaine/creme liqueur mixture, fiberglass in a cocaine/fiberglass bonded suitcase, beeswax in a cocaine/beeswax statue, and waste water from an illicit laboratory used to manufacture a controlled substance.".

11. *Synopsis of Proposed Amendment:* This amendment restructures § 2D1.1 so that the scale of the offense is based on the largest amount of controlled substances with which the defendant was associated at any one time (Option 1), or in any thirty-day period (Option 2), except in extremely large scale cases. Other than in extremely large scale cases, the use of such a "snapshot" arguably provides a more reliable method of distinguishing larger from smaller scale drug traffickers.

Proposed Amendment: [Option 1—Section 2D1.1(a)(3) is amended by inserting the following additional sentence:

> "Where the offense involved a number of transactions, the offense level is to be limited by the amount of the largest single quantity with which the defendant was involved at any one time. Provided, that if any single quantity with which the defendant was involved corresponds to level 32 or greater, the above limitation does not apply and all quantities involved in the offense are to be aggregated."]

[Option 2—Section 2D1.1(a)(3) is amended by inserting the following additional sentence:

> "Where the offense involved a number of transactions over a period of time of more than thirty days, the offense level is to be limited by the amount with which the defendant was involved at any thirty-day period, using the thirty-day period that results in the greatest offense level. Provided, that if any single amount with which the defendant was involved corresponds to offense level 32 or greater, the above time limitation does not apply and all quantities involved in the offense are to be aggregated.".]

12. *Synopsis of Proposed Amendment:* This amendment revises the phrase "did not intend to produce and was not reasonably capable of producing" in Application Note 12 of the Commentary to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) by changing the conjunctive to the disjunctive. The current phraseology has resulted in repeated questions as to its intended meaning.

Proposed Amendment: The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 12 by deleting "did not intend to produce and was not reasonably capable of producing" wherever it appears and inserting in lieu thereof "was not reasonably capable of producing, or otherwise did not intend to produce,".

13. *Issue for Comment:* The Commission invites comment on whether § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) should be amended to address the calculation of weight under negotiation in a reverse sting operation (an operation in which government agents sell or negotiate to sell controlled substances to a defendant) when government agents have set a price for the controlled substance that is substantially below the market value of the controlled substance, thereby leading to the defendant's purchase of a significantly greater quantity of controlled substance than his available resources would have allowed him to purchase, except for the artificially low price set by the government agents.

Chapter Two, Part K (Offenses Involving Public Safety)

14. *Synopsis of Proposed Amendment:* This amendment provides that the determination of prior

conviction(s) of felony crimes of violence or controlled substance offenses under subsections (a)(1) and (2) of § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials) and subsections (a)(1), (2), (3), and (4)(A) of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) is to be made under the same terms and conditions as such determinations under § 4B1.2. The current provision is unclear with respect to the counting of "related" convictions receiving points under § 4A1.1(f) and the counting of convictions occurring after the instant offense.

Proposed Amendment: The Commentary to § 2K1.3 captioned "Application Notes" is amended in Note 2 by deleting ", subsections (1) and (2), and Application Note 3 of the Commentary, respectively. For purposes of determining the number of such convictions under subsections (a)(1) and (a)(2), count any such prior conviction that receives any points under § 4A1.1 (Criminal History Category)", and inserting in lieu thereof:

> "Under subsections (a)(1) and (a)(2), the number of prior felony convictions of a crime of violence or controlled substance offense is determined under the same terms and conditions as applicable to the counting of such convictions for career offender purposes. See § 4B1.2 (Definitions of Terms Used in Section 4B1.1).".

The Commentary to 2K2.1 captioned "Application Notes" is amended in Note 5 by deleting ", subsections (1) and (2), and Application Note 3 of the Commentary, respectively. For purposes of determining the number of such convictions under subsections (a)(1), (a)(2), (a)(3), and (a)(4)(A), count any such prior conviction that receives any points under § 4A1.1 (Criminal History Category)",

and inserting in lieu thereof:

> "Under subsections (a)(1), (a)(2), (a)(3), and (a)(4), the number of prior felony convictions of a crime of violence or controlled substance offense is determined under the same terms and conditions as applicable to the counting of such convictions for career offender purposes. See § 4B1.2 (Definitions of Terms Used in Section 4B1.1).".

15. *Synopsis of Proposed Amendment:* This amendment conforms the definitions of firearms listed under 26 U.S.C. 5845(a) that are currently contained in Application Notes to §§ 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) and 7B1.1 (Classification of Violations). The amendment also corrects a technical misstatement regarding whether certain unaltered handguns are classified as "other weapons" under 26 U.S.C. 5845(e).

Proposed Amendment: The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 3 by deleting:

> "any short-barreled rifle or shotgun or any weapon made therefrom",

and inserting in lieu thereof:

> "a shotgun, or a weapon made from a shotgun, having a barrel or barrels of less than 18 inches in length; a rifle, or a weapon made from a rifle, having a barrel or barrels of less than 16 inches in length; or a weapon made from a shotgun or rifle, having an overall length of less than 26 inches";

and by deleting:

> "or (v) any 'other weapon' as that term is defined by 26 U.S.C. § 5845(e). A firearm listed in 26 U.S.C. § 5845(a) does not include unaltered handguns or regulation-length files or shotguns",

and inserting in lieu thereof:

> "and (v) certain other weapons (that are not conventional, unaltered handguns, rifles, or shotguns) as defined in 26 U.S.C. § 5845(e)".

The Commentary to § 7B1.1 captioned "Application Notes" is amended by deleting Note 4 as follows:

> "4. A 'firearm or destructive device of a type described in 26 U.S.C. § 5845(a)' includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or a weapon made from a rifle, with a barrel or barrels of less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain large bore weapons.",

and inserting in lieu thereof:

> "4. 'Firearm or destructive device of a type described in 26 U.S.C. § 5845(a)' is discussed in Application Notes 3 and 4 of the Commentary to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition).".

16. *Synopsis of Proposed Amendment:* Subsection (b)(4) of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) enhances the offense level if the firearm was stolen. Some confusion continues over whether the defendant had to know or have reason to believe the firearm was stolen. The appellate courts uniformly have held that there is no requirement that the defendant had to have known or have reason to believe the firearm was stolen, but questions and litigation regarding the issue continue. This amendment clarifies this issue by expressly stating that the enhancement applies whether or not the defendant knew or had reason to believe the firearm was stolen or had an altered or obliterated serial number.

Proposed Amendment: The Commentary to § 2K2.1 captioned "Application Notes" is amended by inserting the following additional note:

> "19. The enhancement under subsection (b)(4) for a stolen firearm or a firearm with an altered or obliterated serial number applies whether or not the defendant knew or had reason to believe that the firearm was stolen or had an altered or obliterated serial number.".

17. *Issue for Comment:* The Commission solicits comment on whether to clarify the split among the circuits regarding whether the commentary to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) permits or precludes departure on the basis of the type or nature of the firearm (e.g., semiautomatic, military-style assault weapon).

18. *Issue for Comment:* In § 2K2.4 (Use of Firearms or Armor-Piercing Ammunition During or in Relation to Certain Crimes) paragraphs two and three of Application Note 2 require use of the greater of the sentence prescribed by 18 U.S.C. 924(c) or the incremental increase in punishment resulting from the relevant firearm enhancement. This proviso has been criticized by some as complicated and confusing. Application Note 2 to § 2K2.4 was designed to prevent the anomalous result that occurs when the total punishment for convictions of 18 U.S.C. 924(c) and the underlying offense for which the firearm was used or possessed is less than the punishment for a conviction of only the underlying offense.

The Commission invites comment on ways in which the commentary may be clarified or simplified, or whether the proviso should be deleted and the issue addressed in the unusual case by departure. Further, comment is invited whether to use an approach that requires the application of the relevant guideline firearm enhancement and apportions the resulting combined sentence between the statutorily mandated sentence and the sentence for the underlying offense.

19. *Issue for Comment:* The Commission invites comment on whether the offense levels of 6 and 8 for violations of 18 U.S.C. 922(q) (possession of firearm in school zone) and 18 U.S.C. 930 (possession of dangerous weapon in federal facility) in

§ 2K2.5 (Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone) are adequate relative to the offense level 12 provided under § 2K2.1(a)(7) for certain nonregulatory firearms offenses, or the offense level 6 provided under § 2K2.1(a)(8) for most regulatory firearms offenses. In addition, the Commission invites comment as to whether the offense level provided under § 2K2.5 adequately reflects the mandate that any term of imprisonment imposed under 18 U.S.C. 922(q) run consecutively to any other term of imprisonment.

Chapter Two, Part S—Money Laundering and Monetary Transaction Reporting

20. *Synopsis of Proposed Amendment:* This amendment revises the guidelines in Chapter Two, Part S (Money Laundering and Monetary Transaction Reporting). When the Commission promulgated §§ 2S1.1 and 2S1.2 to govern sentencing for the money laundering and monetary transaction offenses found at 18 U.S.C. 1956 and 1957, these statutes were relatively new and, therefore, the Commission had little case experience upon which to base the guidelines. Additionally, court decisions have since construed the elements of these offenses broadly. This amendment consolidates §§ 2S1.1 and 2S1.2 for ease of application, and provides additional modifications with the aim of better assuring that the offense levels prescribed by these guidelines comport with the relative seriousness of the offense conduct.

The amendment accomplishes the latter goal chiefly by tying base offense levels more closely to the underlying conduct that was the source of the illegal proceeds. If the defendant committed the underlying offense and the offense level can be determined, subsection (a)(1) sets the base offense level equal to that for the underlying offense. In other instances, the base offense level is keyed to the value of funds involved. The amendment uses specific offense characteristics to assure greater punishment when the defendant knew or believed that the transactions were designed to conceal the criminal nature of the proceeds or when the funds were to be used to promote further criminal activity. A further increase is provided under subsection (b)(2) if sophisticated efforts at concealment were involved.

The amendment also consolidates existing §§ 2S1.3 and 2S1.4 for ease of application and modifies these guidelines to assure greater consistency of punishment for similar offenses and greater sensitivity to indicia of offense seriousness. Specifically, the proposed amendment links base offense levels for the reporting violations covered by these guidelines to the defendant's state of mind with respect to the source of the funds, and, in instances where the defendant knew, believed or acted with reckless disregard of the fact that the funds were the proceeds of unlawful activity, to the value of the funds involved. (Related amendment proposal: 58).

Proposed Amendment: Sections 2S1.1, 2S1.2, 2S1.3 and 2S1.4, and accompanying commentary, are deleted in their entirety and the following new guidelines are inserted in lieu thereof:

"§ 2S1.1. Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity

(a) Base Offense Level (Apply the greatest):

(1) the offense level for the underlying offense from which the funds were derived, if the defendant committed the underlying offense and the offense level for that offense can be determined; or

(2) 12 plus the number of offense levels from the table in § 2F1.1 (Fraud or Deceit) corresponding to the value of the funds, if the defendant knew or believed that the funds were the proceeds of an unlawful activity involving the manufacture, importation, or distribution of narcotics or other controlled substances; or

(3) 8 plus the number of offense levels from the table in § 2F1.1 (Fraud or Deceit) corresponding to the value of the funds.

(b) Specific Offense Characteristics

(1) If the defendant knew or believed that (A) the transactions were designed in whole or in part to conceal or disguise the proceeds of criminal conduct or (B) that the funds were to be used to promote further criminal activity, increase by 2 levels.

(2) If subsection (b)(1)(A) is applicable and the offense involved (A) placement of funds into, or movement of funds through or from a company or financial institution outside the United States, or (B) otherwise involved the use of a sophisticated form of money laundering, increase by 2 levels.

Commentary

Statutory Provisions: 18 U.S.C. 1956, 1957.

Application Notes:

1. If the defendant is to be sentenced both on a count for an offense from which the funds were derived and on a count under this guideline, the counts will be grouped together under subsection (c) of § 3D1.2 (Groups of Closely-Related Counts).

2. Subsection (b)(1)(A) is designed to provide a two-level increase for those cases that involve actual money laundering, i.e., efforts to make criminally derived funds appear to have a legitimate source. This subsection will apply, for example, when the defendant conducts a transaction through a straw party or a front company, conceals a money-laundering transaction in a legitimate business, engages in a series of transactions with no legitimate business purpose, or uses an alias or otherwise provides false information to disguise the true source or ownership of the funds.

3. In order for subsection (b)(1)(B) to apply, the defendant must have intended that the funds would be used to promote further criminal activity, i.e., criminal activity beyond the underlying offense from which the funds were derived.

4. Subsection (b)(2) is designed to provide an additional two-level increase for those money laundering cases that are more difficult to detect because sophisticated steps were taken to conceal the origin of the money. Subsection (b)(2)(B) will apply, for example, if the offense involved the layering of transactions, i.e., the creation of more than one level of transaction that appears legitimate.

5. If subsection (b)(1)(A) is applicable, subsection (b)(2) also may be applicable. In such cases, the enhancements are cumulative.

Background: The statutes covered by this guideline are a part of the Anti-Drug Abuse Act of 1986 and prohibit financial and monetary transactions involving funds that are the proceeds of "specified unlawful activity."

§ 2S1.2. Structuring Transactions to Evade Reporting Requirements; Failure to Report Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports

(a) Base Offense Level (Apply the greatest):

(1) 8 plus the number of offense levels from the table in § 2F1.1 (Fraud or Deceit) corresponding to the value of the funds, if the defendant knew or believed that the funds were the proceeds of unlawful activity; or

(2) 6 plus the number of offense levels from the table in § 2F1.1 (Fraud or Deceit) corresponding to the value of the funds, if the defendant acted with reckless disregard as to whether the funds were the proceeds of unlawful activity; or

(3) 6.

(b) Cross Reference

(1) If the offense was committed for the purpose of tax evasion, apply the most applicable guideline from Chapter Two, Part T, Subpart 1 (Income Tax) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 26 U.S.C. 7203 (if a willful violation of 26 U.S.C. § 6050I); 31 U.S.C. 5313, 5314, 5316, 5324. For additional statutory provisions, see appendix A.

Background: The offenses covered by this guideline relate to records and reports of certain transactions involving currency and monetary instruments.".

Chapter Two Part T—Offenses Involving Taxation

21. *Synopsis of Proposed Amendment:* This amendment consolidates §§ 2T1.1 (Tax Evasion), 2T1.2 (Willful Failure To File Return, Supply Information, or Pay Tax), 2T1.3 (Fraud and False Statements Under

Penalty of Perjury), and 2T1.5 (Fraudulent Returns, Statements, or Other Documents), thereby eliminating the confusion that has arisen in some cases regarding which guideline applies. In addition, by adopting a uniform definition of tax loss, this amendment eliminates the anomaly of using actual tax loss in some cases and an amount that differs from actual tax loss in others. Furthermore, this amendment clarifies the circumstances under which the specific offense characteristics of § 2T1.9 apply and the relationship between the loss calculation under § 2T1.4 and § 2T1.9. (Related amendment proposal: 41).

Proposed Amendment: Section 2T1.1 is amended in the title by inserting "; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents" immediately after "Evasion".

Section 2T1.1(a) is deleted and the following is inserted in lieu thereof:

"(a) Base Offense Level (Apply the Greater):

(1) Level from § 2T4.1 (Tax Table) corresponding to the tax loss; or

(2) 6, if there is no tax loss.".

Section 2T1.1(b)(2) is amended by deleting "nature" and inserting in lieu thereof "existence".

Section 2T1.1 is amended by inserting the following additional subsection:

"(c) Special Instructions

(1) Definition of Tax Loss. For the purposes of this guideline—

(A) If the offense involved tax evasion or fraud, the tax loss is the total amount of tax that was the object of the evasion or fraud (i.e., the tax loss that would have resulted had the offense been successfully completed);

(B) if the offense involved willful failure to pay tax, the tax loss is the amount of tax that the taxpayer owed and willfully did not pay; and

(C) if the offense involved failure to file tax return(s), the tax loss is the amount of tax that the taxpayer owed and did not pay in respect to such return(s).

(2) Determination of Tax Loss. For the purposes of determining the tax loss under this guideline—

(A) In a case in which a tax return was filed and gross income was underreported, there shall be a rebuttable presumption that the tax loss is equal to 28% of the unreported gross income (34% if the taxpayer is a corporation), plus 100% of any false credits claimed against tax;

(B) in the case of a failure to file a tax return, there shall be a rebuttable presumption that the tax loss is equal to 20% of the gross income (25% if the taxpayer is a corporation), less any tax withheld or otherwise paid; and

(C) in the case in which a tax return was filed and a deduction was improperly claimed to provide a basis for tax evasion in the future, there shall be a rebuttable presumption that the tax loss is equal to 28% of the amount of the improperly claimed deduction (34% if the taxpayer is a corporation).".

The Commentary to § 2T1.1 captioned "Statutory Provision" is amended by deleting "Provision" and inserting in lieu thereof "Provisions", by and inserting ", 7203 (other than a willful violation of 26 U.S.C. 6050I), 7206 (except 7206(2)), 7207"; and inserting "§" immediately following "§".

The Commentary to § 2T1.1 captioned "Application Notes" is amended by deleting Application Notes 1 and 4, and by renumbering Notes 2, 3, 5, and 6 as Notes 1, 2, 3, and 4, respectively.

The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 1 (formerly Note 2) by deleting "For purposes of the guideline, the tax loss is the amount of tax that the taxpayer evaded or attempted to evade." and inserting in lieu thereof "'Tax loss' is defined in subsection (c)(1).", and by inserting the following at the end:

"Rebuttable presumptions are set forth in subsection (c)(2) to address situations in which the actual tax loss may not be reasonably ascertainable. Where applicable, the rebuttable presumption is to be used unless the government or defense provides sufficient information for a more accurate assessment of the actual tax loss.

Example 1: A defendant files a tax return reporting income of $40,000 when his income was actually $90,000. Under subsection (c)(2)(A), there is a rebuttable presumption that the tax loss is $14,000 ($90,000 of actual gross income minus $40,000 of reported gross income=$50,000×28%). If, however, sufficient information were available to make a more accurate assessment of the actual tax loss, such assessment would be used in place of the amount determined under subsection (c)(2)(A).

Example 2: A defendant files a tax return reporting income of $60,000 when his income was actually $130,000. In addition, the defendant claims $10,000 in false tax credits. Under subsection (c)(2)(A), there is a rebuttable presumption that the tax loss is $29,600 ($130,000 of actual gross income minus $60,000 of reported gross income=$70,000×28%=$19,600, plus $10,000 of false tax credits). If, however, sufficient information were available to make a more accurate assessment of the actual tax loss, such assessment would be used in place of the amount determined under subsection (c)(2)(A).

Example 3: A defendant fails to file a tax return for a year in which his salary was $24,000, and $2,600 in income tax was withheld by his employer. Under subsection (c)(2)(B), there is a rebuttable presumption that the tax loss is $2,200 ($24,000 of gross income×20%=$4,800, minus $2,600 of tax withheld). If, however, sufficient information were available to make a more accurate assessment of the actual tax loss, such assessment would be used in place of the amount determined under subsection (c)(2)(B).

In determining the tax loss attributable to the offense, the court should use as many methods set forth in subsection (c) and this commentary as are necessary given the circumstances of the particular case. If none of the methods of determining the tax loss set forth fits the circumstances of the particular case, the court should use any method of determining the tax loss that reasonably calculates the tax loss that would have resulted had the offense been successfully completed.".

The Commentary to § 2T1.1 captioned "Application Notes" is amended by inserting the following additional notes:

"5. A 'credit claimed against tax' is an item that reduces the amount of tax directly, in contrast to a 'deduction' that reduces the amount of taxable income.

6. 'Gross income,' for the purposes of this section, has the same meaning as it has in 26 CFR 1.61.

7. If the offense involves both individual and corporate tax returns, the tax loss is the cumulative tax loss from the offenses taken together.".

The Commentary to § 2T1.1 captioned "Background" is amended in the first paragraph by deleting "evaded" and inserting in lieu thereof "loss", by deleting "evasion" the first time it appears and inserting in lieu thereof "tax loss", and by inserting "or tax fraud" immediately before "increases,".

The Commentary to § 2T1.1 captioned "Background" is amended in the fourth paragraph by deleting the first two sentences, and in the fifth paragraph by deleting the last sentence.

The Commentary to § 2T1.1 captioned "Background" is amended in the sixth paragraph by inserting "and tax fraud" immediately following "tax evasion", by inserting "or fraud" immediately following "the evasion", and by deleting the last sentence.

Sections 2T1.2 and 2T1.3 are deleted in their entirety.

Section 2T1.4(a) is amended by deleting "§ 2T1.3" and by inserting in lieu thereof "§ 2T1.1".

Section 2T1.4(b)(1) is amended by inserting "(A)" immediately following "If", and by inserting "or (B) the defendant was in the business of preparing or assisting in the preparation of tax returns," immediately before "increase by 2 levels.".

Section 2T1.4(b)(2) is amended by deleting "nature" and inserting in lieu thereof "existence".

Section 2T1.4(b)(3) is deleted.

The Commentary to § 2T1.4 captioned "Application Notes" is amended by deleting Notes 3 and 4, by renumbering Application Notes 1 and 2 as 2 and 3, respectively; and by inserting the following as Note 1:

"1. For the general principles underlying the determination of tax loss, see Application Note 1 of the Commentary to § 2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents). In certain instances, such as promotion of a tax shelter scheme, the defendant may advise other persons to violate their tax obligations through filing returns that find no support in the tax laws. If this type of conduct can be shown to have resulted in the filing of false returns (regardless of whether the principals were aware of their falsity), the misstatements in all such returns will contribute to one aggregate 'tax loss.' ".

The Commentary to § 2T1.4 captioned "Application Notes" is amended in Application Note 2 (formerly note 1) by inserting "has two prongs. The first prong" immediately after "(b)(1)", and by inserting the following as the last sentence:

"The second prong applies to persons who regularly act as tax preparers or advisers for profit; if an enhancement from this prong is applied, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to § 2T1.4 captioned "Background" is amended by inserting "and those who make a business of promoting tax fraud" immediately following "advisers", and by deleting "§ 2T1.3" and inserting in lieu thereof "§ 2T1.1".

Section 2T1.5 is deleted in its entirety.

Section 2T1.9(a)(1) is amended by deleting "§ 2T1.3" and inserting in lieu thereof "§ 2T1.4".

Section 2T1.9(b)(1) is amended by inserting "to impair, impede, or defeat the ascertainment, computation, assessment, or collection of revenue" immediately following "violence".

Section 2T1.9(b)(2) is amended by deleting "impede or impair the Internal Revenue Service in the assessment and" and inserting in lieu thereof "impair, impede, or defeat the ascertainment, computation, assessment, or" and by inserting the following as the last sentence:

"Do not, however, apply this adjustment if an adjustment from § 2T1.4(b)(1) is applied.".

The Commentary to § 2T1.9 captioned "Application Notes" is amended in Note 2 by deleting "§ 2T1.3" and inserting in lieu thereof "§ 2T1.4", and by inserting the following additional note:

"4. Subsection (b)(2) provides an enhancement where the conduct was intended to encourage persons, other than the participants directly involved in the offense, to violate the tax laws (e.g., an offense involving a "tax protest" group that encourages persons to violate the tax laws, or an offense involving the marketing of fraudulent tax shelters).".

Section 3D1.2(d) is amended in the second paragraph by deleting "2T1.2, 2T1.3,".

Additional Issue for Comment: The Commission invites comment on whether, in addition to or as an alternative to the amendments proposed to the tax offense guidelines, the tax table at § 2T4.1 should be amended by increasing each offense level by [one] [two] level(s). This amendment would offset the potential impact of Commission amendments to the Sentencing Table and Chapter Five, Part C, effective November 1, 1992, that increased the potential for sentences of probation without confinement conditions for lower-level tax offenders (i.e., offenders in Criminal History Category I with final offense levels of 7 or 8).

§ 2X1.1 (Attempt, Solicitation or Conspiracy (Not Covered by a Specific Offense Guideline))

22. *Synopsis of Proposed Amendment*: This amendment clarifies the operation of § 2X1.1 (Attempt, Solicitation or Conspiracy (Not Covered by a Specific Offense Guideline)). Several appellate courts have read the title of § 2X1.1 to mean that the guideline does not apply when the statute covering the substantive offense also covers an inchoate version of the offense. This interpretation is inconsistent with the overall structure of the guidelines as well as specific commentary in other portions of the Guidelines Manual. In addition, this amendment simplifies the structure of this guideline by merging subsections (b) (1), (2), and (3), and by addressing the offenses currently covered by subsection (b)(3)(B) by including a specific reference to solicitation in the titles of the appropriate offense guideline, as is done in the case of conspiracy and attempt.

Proposed Amendment: The title of § 2X1.1 is amended by deleting "(Not Covered by a Specific Offense Guideline)".

The Commentary to § 2X1.1 captioned "Application Notes" is amended by deleting the first sentence of Note 1 and inserting in lieu thereof:

" 'Expressly covered by another offense guideline section,' as used in subsection (c), means that the title of the offense guideline section applicable to the substantive offense expressly covers an attempt, conspiracy, or solicitation. For example, § 2A2.1 (Assault With Intent to Commit Murder; Attempted Murder) expressly covers attempted murder; § 2A1.5 (Conspiracy or Solicitation to Commit Murder) expressly covers conspiracy and solicitation to commit murder. In contrast, § 2B3.1 (Robbery) does not expressly cover attempt, conspiracy, or solicitation to commit robbery.".

Section 2X1.1(b) is amended by deleting subdivisions (1), (2), and (3) as follows:

"(1) If an attempt, decrease by 3 levels unless the defendant completed all the acts the defendant believed necessary for successful completion of the substantive offense or the circumstances demonstrate that the defendant was about to complete all such acts but for apprehension or interruption by some similar event beyond the defendant's control.

(2) If a conspiracy, decrease by 3 levels, unless the defendant or a co-conspirator completed all the acts the conspirators believed necessary on their part for the successful completion of the substantive offense or the circumstances demonstrate that the conspirators were about to complete all such acts but for apprehension or interruption by some similar event beyond their control.

(3)(A) If a solicitation, decrease by 3 levels unless the person solicited to commit or aid the substantive offense completed all the acts he believed necessary for successful completion of the substantive offense or the circumstances demonstrate that the person was about to complete all such acts but for apprehension or interruption by some similar event beyond such person's control.

(B) If the statute treats solicitation of the substantive offense identically with the substantive offense, do not apply subdivision (A) above; i.e., the offense level for solicitation is the same as that for the substantive offense.",

and inserting in lieu thereof:

"(1) Decrease by 3 levels unless (A) the defendant, a co-conspirator, or, in the case of a solicitation, the person solicited to commit the offense committed all of the acts he believed necessary for the successful completion of the substantive offense; or (B) the circumstances demonstrate that he was about to complete all such acts but for apprehension or interruption by some similar event beyond his control.".

The Commentary to § 2X1.1 captioned "Application Notes" is amended in the last paragraph of Note 1 by inserting "§ 2B4.1 Bribery in Procurement of Bank Loan and Other Commercial Bribery; Solicitation of Bribe);" immediately before "§ 2C1.1"; by inserting "§ 2C1.5 (Payments to Obtain Public Office; Solicitation of Payment); § 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper; Solicitation of Loan or Gratuity);" immediately before "§ 2E5.1"; and by inserting "; § 2E5.6 (Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations; Solicitation of Prohibited Payment or Loan); § 2J1.8 (Bribery of Witness; Solicitation of Bribe); § 2J1.9 (Payment to Witness; Solicitation of Payment)" immediately before the period at the end of the sentence.

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 4 in the second sentence of the first paragraph by deleting ", (b)(2), or (b)(3)(A)", and in the second paragraph by deleting ", (b)(2), or (b)(3)(A)".

The Commentary to § 2X1.1 captioned "Background" is amended in the last sentence by deleting "(1) or (2)".

Conforming Amendments: Section 2B4.1 is amended in the title by inserting at the end "; Solicitation of Bribe".

Section 2C1.5 is amended in the title by inserting at the end "; Solicitation of Payment".

Section 2C1.6 is amended in the title by inserting at the end "; Solicitation of Loan or Gratuity".

Section 2E5.6 is amended in the title by inserting at the end: "; Solicitation of Prohibited Payment or Loan".

Section 2J1.8 is amended in the title by inserting at the end "; Solicitation of Bribe".

Section 2J1.9 is amended in the title by inserting at the end "; Solicitation of Payment".

§ 3B1.3. Abuse of Position of Trust or Use of Special Skill

23. *Synopsis of Proposed Amendment:* Numerous questions have arisen regarding the application of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) in respect to the intended scope of the abuse of trust prong of this adjustment. This amendment reformulates the definition of an abuse of position of trust to provide a more detailed definition that better distinguishes cases warranting this enhancement. (Related amendment proposal: 46).

Proposed Amendment: Section 3B1.3 is amended in the title by inserting "Special" immediately before "Trust".

Section 3B1.3 is amended by inserting "special" immediately before "trust" wherever the latter term appears.

The Commentary to § 3B1.3 captioned "Application Notes" is amended by deleting Note 1 as follows:

> "1. The position of trust must have contributed in some substantial way to facilitating the crime and not merely have provided an opportunity that could as easily have been afforded to other persons. This adjustment, for example, would not apply to an embezzlement by an ordinary bank teller.",

and inserting in lieu thereof:

> "1. 'Special trust' refers to a position of public or private trust characterized by professional or managerial discretion (i.e., substantial discretionary judgment that is ordinarily given considerable deference). Persons holding such positions ordinarily are subject to significantly less supervision than an employee whose responsibilities are primarily ministerial in nature. For this enhancement to apply, the position of trust must have contributed in some significant way to facilitating the commission or concealment of the offense (e.g., by making the detection of the offense or the defendant's responsibility for the offense more difficult). This adjustment, for example, would apply in the case of an embezzlement of a client's funds by an attorney serving as a guardian, a bank president's fraudulent loan scheme, or the criminal sexual abuse of a patient by a physician under the guise of an examination. This adjustment would not apply in the case of an embezzlement or theft by an ordinary bank teller, hotel clerk, or postal clerk because such positions are not characterized by the above-described factors.".

Additional Issue for Comment: The Commission invites comment on whether, as an alternative to modifying § 3B1.3, the Commission should amend § 2B1.1 and § 2B1.2 to add a specific offense characteristic relating to enhancement for abuse of trust in embezzlement cases and provide that the enhancement in § 3B1.3 would not apply if the proposed specific offense characteristic was applied. The commentary to § 3B1.3 would be amended to delete the example regarding an ordinary bank teller.

§ 5K1.1 (Substantial Assistance to Authorities)

24. *Issue for Comment:* The Commission invites comment with regard to § 5K1.1 (Substantial Assistance to Authorities) on the following question: Whether in cases involving first offenders, where no violence was associated with the offense, where the Government does not present a motion for substantial assistance, and where the Court nonetheless deems such a motion appropriate, the Court should be able, on its own motion, to depart from the Guidelines? (Related amendment proposals: 31 and 47).

§ 6B1.2. Standards for Acceptance of Plea Agreements

25. *Synopsis of Proposed Amendment:* This amendment adds commentary to the policy statement at § 6B1.2 (Standards for Acceptance of Plea Agreements) recommending that the government disclose to the defendant information known to the government that is relevant to application of the guidelines in order to encourage plea negotiations that realistically reflect probable outcomes. (Related amendment proposal: 36).

Proposed Amendment: The Commentary to § 6B1.2 is amended by inserting the following additional paragraph at the end:

> "The Commission encourages the government [(Option 1) in plea discussions] [(Option 2) prior to the Rule 11 colloquy] to disclose to the defendant facts and circumstances of the offense and offender characteristics, known to the government, that are relevant to application of the sentencing guidelines.".

Anti Car Theft Act of 1992

26. *Issue for Comment:* The Commission invites comment on the most appropriate guideline for the recently enacted armed carjacking statute (Section 101 of Pub. L. 102–519).

In addition, the Commission invites comment on whether the offense levels in §§ 2B1.1, 2B1.2, and 2B1.6 should be raised for offenses involving stolen vehicles to reflect the increase in the maximum imposable sentence from five to ten years' imprisonment under sections 102 and 103 of Public Law 102–519 (Anti Car Theft Act of 1992) and, if so, whether the offense levels should be increased by 2, 4, or 6 levels. (Related amendment proposal: 62).

Consolidation and Simplification of Chapter Two Offense Guidelines

27. *Synopsis of Proposed Amendment:* This amendment deletes 27 offense guidelines by consolidating them with other offense guidelines that cover similar offense conduct and have either identical or very similar characteristics. Consolidation of offense guidelines in this manner has a number of practical advantages: (A) it shortens and simplifies the Guidelines Manual; (B) it reduces the likelihood of inconsistency in phraseology and definitions from section to section; (C) it reduces possible confusion and litigation as to which guideline applies to particular conduct (e.g., in many instances it is not clear whether § 2B1.1 or § 2B1.2 applies, because the defendant whose actual conduct involved theft will be convicted of the federal offense of transporting stolen property across a state line, rather than theft); (D) it reduces the number of conforming amendments required whenever similar sections are amended; and (E) it will aid the development of case law because cases involving similar or identical concepts and definitions can be referenced under one guideline rather than different guidelines.

The purpose of this amendment is to simplify the operation of the guidelines and not to raise or lower offense levels.

The amendment is divided into 21 subdivisions (A–U). Subdivisions A–R should not produce any substantive changes. In the remaining subdivisions, the consolidations will result in substantive changes in isolated cases. In subdivision S, the consolidation of §§ 2B1.1 and 2B1.2 may result in a substantive change in the isolated case of a defendant who participates in a large scale theft from a financial institution but is convicted of an offense referenced to § 2B1.2 (receiving, transporting, possessing, or transmitting stolen property) rather than § 2B1.1 (theft). In such an atypical case, the proposed consolidation could result in a substantive change because current § 2B1.1 contains enhancements related to large scale thefts from financial institutions, while current § 2B1.2 does not. In subdivision T, the consolidation of §§ 2H1.3 and 2H1.5 will result in the enhancement for use of force or damage to religious real property being applied as a sentencing factor rather than being dependent upon the statute of conviction. In subdivision U, the consolidation of §§ 2G1.1 and 2G1.2 will result in the specific offense characteristics and cross references of § 2G1.2 being added to the current § 2G1.1.

Proposed Amendment: (A). Section 2B2.2 is deleted in its entirety.

Section 2B2.1 is amended in the title by inserting "or a Structure Other than a Residence" at the end thereof.

Section 2B2.1(a) is amended by deleting "17" and inserting in lieu thereof "(1) 17, if a residence; or (2) 12, if a structure other than a residence.".

The Commentary to § 2B2.1 captioned "Statutory Provision" is amended by deleting "Provision" and inserting in lieu thereof "Provisions", and by inserting ", 2113(a), 2115, 2117, 2118(b). For additional statutory provision(s), see Appendix A (Statutory Index)" immediately following "1153".

(B). Section 2B5.2 is deleted in its entirety.

Section 2F1.1 is amended in the title by inserting "; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States" at the end thereof.

The Commentary to § 2F1.1 captioned "Statutory Provisions" is amended by inserting "471–473, 500, 510," immediately following "289,", and by inserting ", 2314, 2315" immediately following "1344".

(C). Section 2B5.4 is deleted in its entirety.

Section 2B5.3 is amended in the title by inserting "or Trademark" at the end thereof.

The Commentary to § 2B5.3 captioned "Statutory Provisions" is amended by deleting "2319" and inserting in lieu thereof "2318–2320".

The Commentary to § 2B5.3 captioned "Background" is amended by inserting "and trademark" immediately following "copyright".

(D). Sections 2D3.3, 2D3.4, and 2D3.5 are deleted in their entirety.

Section 2D3.2 is amended in the title by deleting "Manufacture of Controlled Substances in Excess of or Unauthorized by Registration Quota; Attempt or Conspiracy" and inserting in lieu thereof "Regulatory Offenses Involving Controlled Substances; Attempt or Conspiracy".

The Commentary to § 2D3.2 captioned "Statutory Provisions" is amended by deleting "842(b), 843(a)(3)" and inserting in lieu thereof "842(a)(2), (a)(9), (a)(10), (b), 843(a)(3), 954, 961".

The Commentary to § 2D3.2 captioned "Background" is amended by deleting "This offense is a" and inserting in lieu thereof "These offenses are".

(E). Section 2E1.5 is deleted in its entirety.

Appendix A (Statutory Index) is amended in the line beginning "18 U.S.C. 1951" by deleting "2E1.5" and inserting in lieu thereof "2B3.1, 2B3.2, 2B3.3, 2C1.1".

(F). Sections 2E3.2 and 2E3.3 are deleted in their entirety.

Section 2E3.1 is amended in the title by deleting "Engaging in a Gambling Business", and by inserting in lieu thereof "Gambling Offenses".

Section 2E3.1(a) is amended by deleting "12" and inserting in lieu thereof:

"(1) 12, if the offense was (A) engaging in a gambling business; (B) transmission of wagering information; or (C) committed as part of, or to facilitate, a commercial gambling operation; or

(2) 6, otherwise."

The Commentary to § 2E3.1 captioned "Statutory Provision" is amended by deleting "Provision" and inserting in lieu thereof "Provisions", and by deleting "18 U.S.C. 1955" and inserting in lieu thereof "15 U.S.C. 1172–1175; 18 U.S.C. 1082, 1301–1304, 1306, 1511, 1953, 1955. For additional statutory provision(s), see appendix A (Statutory Index)".

(G). Section 2E5.6 is deleted in its entirety.

Section 2E5.1 is amended in the title by inserting "; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations" at the end thereof.

The Commentary to § 2E5.1 captioned "Statutory Provision" is amended by deleting "Provision" and inserting in lieu thereof "Provisions", and by inserting "; 29 U.S.C. 186" immediately following "1954".

The Commentary to § 2E5.1 captioned "Background" is amended by inserting ", or labor organizations" immediately following "plans".

(H). Sections 2E5.2 and 2E5.4 are deleted in their entirety.

Appendix A (Statutory Index) is amended in the line beginning "18 U.S.C. 664" by deleting "2E5.2" and inserting in lieu thereof "2B1.1", and in the line beginning "29 U.S.C. 501(c)" by deleting "2E5.2" and inserting in lieu thereof "2B1.1".

The Commentary to § 3B1.3 captioned "Application Notes" is amended by inserting the following additional note:

"3. The following are specific illustrations of the circumstances in which an adjustment for an abuse of a position of trust will apply:

(A) the offense involved theft or embezzlement from an employee pension or welfare benefit plan (a violation of 18 U.S.C. 664) and the defendant was a fiduciary of the benefit plan. "Fiduciary of the benefit plan" is defined in 29 U.S.C. 1002(21)(A) to mean a person who exercises any discretionary authority or control in respect to the management of such plan or exercises authority or control in respect to management or disposition of its assets, or who renders investment advice for a fee or other direct or indirect compensation with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or who has any discretionary authority or responsibility in the administration of such plan; or

(B) the offense involved theft or embezzlement from a labor union (a violation of 29 U.S.C. 501(c)) and the defendant was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. 501(a).".

(I). Section 2E5.5 is deleted in its entirety.

Section 2E5.3 is amended in the title by inserting "; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act" at the end thereof.

The Commentary to § 2E5.3 captioned "Statutory Provision" is amended by deleting "Provision" and inserting in lieu thereof "Provisions", and by inserting ", 29 U.S.C. 439, 461. For additional statutory provision(s), see appendix A (Statutory Index)." immediately following "1027".

The Commentary to § 2E5.3 captioned "Background" is amended by inserting "It also covers failure to maintain proper documents required by the LMRDA or falsification of such documents." immediately following the first sentence.

(J). Section 2J1.8 is deleted in its entirety.

Section 2J1.3 is amended in the title by inserting "; Bribery of Witness" at the end thereof.

Section 2J1.3(b)(2) is amended by deleting "perjury or subornation of perjury" and inserting in lieu thereof "perjury, subornation of perjury, or witness bribery".

Section 2J1.3(c)(1) is amended by deleting "perjury or subornation of perjury" and inserting in lieu thereof "perjury, subornation of perjury, or witness bribery".

The Commentary to § 2J1.3 captioned "Statutory Provisions" is amended by inserting "201(b)(3)(4)," immediately before ", 1621".

(K). Section 2K1.2 is deleted in its entirety.

The Commentary to § 2K1.1 captioned "Statutory Provisions" is amended by deleting "844(b)." and inserting in lieu thereof "(j), 844(b). For additional statutory provision(s), see Appendix A (Statutory Index).".

(L). Section 2K1.7 is deleted in its entirety.

Section 2K2.4 is amended in the title by deleting "Firearms or" and inserting "Firearm," in lieu thereof, and by inserting ", or Explosive" immediately following "Ammunition".

Section 2K2.4(a) is amended by inserting "§ 844(h), immediately before "§ 924(c)".

The Commentary to § 2K2.4 captioned "Statutory Provisions" is amended by inserting "844(h)," immediately before "924(c)".

The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 2 in the first paragraph by deleting "a firearm" and inserting in lieu thereof "an explosive or firearm", and in the second paragraph by deleting "§ 924(c)" wherever it occurs and inserting in lieu thereof in each instance "§ 844(h), § 924(c),".

The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 4 by deleting "§ 924(c)" wherever it occurs and inserting in lieu thereof in each instance "§ 844(h), § 924(c),".

The Commentary to § 2K2.4 captioned "Background" is amended by deleting "924(c)" and inserting in lieu thereof "844(h), 924(c),", and by inserting "explosive or" immediately following "characteristic for".

(M). Section 2K3.1 is deleted in its entirety.

Section 2Q1.2 is amended in the title by inserting "; Unlawfully Transporting Hazardous Materials in Commerce" at the end thereof.

The Commentary to § 2Q1.2 captioned "Statutory Provisions" is amended by inserting "; 49 U.S.C. 1809(b)" immediately following "1822(b)".

(N). Section 2L2.3 is deleted in its entirety.

Section 2L2.1 is amended in the title by inserting "Trafficking in a United States Passport;" immediately following "Another;".

The Commentary to § 2L2.1 captioned "Statutory Provisions" is amended by inserting "1542, 1544," immediately following "1427,".

(O). Section 2L2.4 is deleted in its entirety.

Section 2L2.2 is amended in the title by inserting "; Fraudulently Acquiring or Improperly Using a United States Passport" at the end thereof.

The Commentary to § 2L2.2 captioned "Statutory Provisions" is amended by deleting "1546." and inserting in lieu thereof "1543, 1544, 1546. For additional statutory provision(s), see Appendix A (Statutory Index)."

(P). Section 2M2.2 is deleted in its entirety.

Section 2M2.1 is amended in the title by inserting "or Production" immediately following "Destruction".

The Commentary to § 2M2.1 captioned "Statutory Provisions" is amended by inserting ", 2154" immediately following "2153".

(Q). Section 2M2.4 is deleted in its entirety.

Section 2M2.3 is amended in the title by inserting "or Production" immediately following "Destruction".

The Commentary to § 2M2.3 captioned "Statutory Provisions" is amended by inserting ", 2156" immediately following "2155".

(R). Sections 2M3.6, 2M3.7, and 2M3.8 are deleted in their entirety.

Section 2M3.3 is amended in the title by inserting "Disclosure of Classified Cryptographic Information; Unauthorized Disclosure to a Foreign Government or a Communist Organization of Classified Information by Government Employee; Unauthorized Receipt of Classified Information" at the end thereof.

The Commentary to § 2M3.3 captioned "Statutory Provisions" is amended by inserting "783(b), (c)," immediately before "793(d)", and by inserting ", 798" immediately following "(g)".

The Commentary to § 2M3.3 captioned "Background" is amended by inserting the following additional paragraph at the end:

> "This section also covers statutes that proscribe the disclosure of classified information concerning cryptographic or communication intelligence to the detriment of the United States or for the benefit of a foreign government, the unauthorized disclosure to a foreign government or a communist organization of classified information by a government employee, and the unauthorized receipt of classified information.".

(S). Section 2B1.2 is deleted in its entirety.

Section 2B1.1 is amended in the title by inserting "; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property" at the end thereof.

Section 2B1.1(b)(2) is amended by inserting "(A)" immediately following "If", and by inserting "or the taking of such item was an object of the offense; or (B) the stolen property received, transported, transferred, transmitted, or possessed was a firearm, destructive device, or controlled substance" immediately after "taken".

Section 2B1.1(b)(4) is amended by inserting "(A)" immediately following "If", and by inserting ", or the taking of such item was an object of the offense; or (B) the stolen property received, transported, transferred, transmitted, or possessed was undelivered United States mail" immediately following "taken".

Section 2B1.1(b)(5) is amended by inserting "—(A) involved receiving stolen property and the defendant was a person in the business of receiving and selling stolen property, increase by 4 levels; or (B)" immediately following "offense".

The Commentary to § 2B1.1 captioned "Statutory Provisions" is amended by inserting "553(a)(1)," immediately following "225,", and by deleting "2312," and inserting in lieu thereof "2312–".

The Commentary to § 2B1.1 captioned "Background" is amended by inserting, as an additional paragraph at the end, the text of the background commentary of former § 2B1.2.

(T). Section 2H1.5 is deleted in its entirety.

Section 2H1.3 is amended in the title by deleting "Use of Force or Threat of Force to Deny" and inserting in lieu thereof "Deprivation of".

Section 2H1.3 is amended by deleting subsection (a) and inserting in lieu thereof:

> "(a) Base Offense Level (Apply the greatest):
>
> (1) 15, if physical injury resulted; or
>
> (2) 10, if the offense was committed by the use or threat of force, or involved damage to religious real property; or
>
> (3) 2 plus the offense level applicable to any underlying offense; or
>
> (4) 6.".

The Commentary to § 2H1.3 captioned "Statutory Provisions" is amended by inserting "246," immediately following "245,".

The Commentary to § 2H1.3 captioned "Application Notes" is amended in Note 2 by deleting "'Injury'" and inserting in lieu thereof "'Physical injury'"; in Note 3 by deleting "§ 2H1.3(b)(1)" and inserting in lieu thereof "subsection (b)(1)"; and by deleting Note 4.

The Commentary to § 2H1.3 captioned "Background" is amended by deleting the last two sentences.

(U). Section 2G1.2 is deleted in its entirety.

Section 2G1.1(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics"; and by inserting the following additional subdivisions:

"(2) If the offense involved the transportation of a person who (A) has not attained the age of twelve years, increase by 6 levels; (B) has attained the age of twelve years but has not attained the age of sixteen years, increase by 4 levels; or (C) has attained the age of sixteen years but has not attained the age of eighteen years, increase by 2 levels.

(3) If subsection (b)(2) applies, and the defendant was a parent, relative, or legal guardian of the minor, or if the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.".

Section 2G1.1(c) is amended by redesignating subsection "(c)" as subsection "(d)", by deleting "Instruction" and inserting in lieu thereof "Instructions," and by inserting the following additional subdivision:

"(2) For the purposes of this guideline, "transportation" includes (A) transporting a person for the purpose of prostitution or prohibited sexual conduct, and (B) persuading, inducing, enticing, or coercing a person to travel for the purpose of prostitution or prohibited sexual conduct."

Section 2G1.1 is amended by inserting the following additional subsection:

"(c) Cross References

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

(2) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).

(3) If the offense did not involve transportation for the purpose of prostitution, and neither subsection (c)(1) nor (c)(2) is applicable, use the offense guideline applicable to the underlying prohibited sexual conduct. If no offense guideline is applicable to the prohibited sexual conduct, apply § 2X5.1 (Other Offenses).".

The Commentary to § 2G1.1 captioned "Statutory Provisions" is amended by inserting ", 2243" immediately following "2422".

The Commentary to § 2G1.1 captioned "Application Notes" is amended by deleting Note 1 and inserting in lieu thereof:

"1. 'Sexually explicit conduct,' as used in this guideline, has the meaning set forth in 18 U.S.C. 2256.";

and by inserting the following additional notes:

"6. Subsection (b)(4) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the child and not simply to the legal status of the defendant-child relationship.

7. If the adjustment in subsection (b)(4) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

8. The cross reference in subsection (c)(1) is to be construed broadly to include all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

9. The cross reference at subsection (c)(3) addresses the unusual case in which the offense did not involve transportation for the purpose of prostitution and neither subsection (c)(1) nor (c)(2) is applicable. In such case, the guideline for the underlying prohibited sexual conduct is to be used, e.g., § 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact). If there is no offense guideline for the underlying prohibited sexual conduct, § 2X5.1 (Other Offenses) is to be used.".

In addition, Appendix A (Statutory Index) is amended by conforming all references to guidelines that have been deleted by consolidation in subdivisions (A) through (U) above to the appropriate consolidated guideline section.

Miscellaneous Substantive, Clarifying, Conforming, and Technical Amendments and Issues for Comment

28(A). *Synopsis of Proposed Amendment:* The Background Commentary to § 2A1.1 (First Degree Murder) indicates that there may be some ambiguity regarding whether a term of years may be imposed under 18 U.S.C. 1111(b) or whether a sentence of life imprisonment is mandated. The appellate courts that have addressed the issue have held uniformly that the statute requires a mandatory term of life imprisonment. This amendment deletes the commentary relevant to this issue as well as three unnecessary sentences of commentary reciting maximum penalties.

Proposed Amendment: The Commentary to § 2A1.1 captioned "Background" is deleted as follows:

"Background: The maximum penalty authorized by 18 U.S.C. 1111 for first degree murder is death or life imprisonment. Whether a mandatory minimum term of life imprisonment is applicable to every defendant convicted of first degree murder under 18 U.S.C. 1111 is a matter of statutory interpretation for the courts. The discussion in Application Note 1, supra, regarding circumstances in which a downward departure may be warranted is relevant in the event the penalty provisions of 18 U.S.C. 1111 are construed to permit a sentence less than life imprisonment, or in the event the defendant is convicted under a statute that expressly authorizes a sentence of less than life imprisonment (e.g., 18 U.S.C. 2113(e), 2118(c)(2), 21 U.S.C. 848(e)).

The maximum penalty authorized under 21 U.S.C. 848(e) is death or life imprisonment. If a term of imprisonment is imposed, the statutorily required minimum term is twenty years.".

(B). *Synopsis of Proposed Amendment:* This amendment revises §§ 2A2.1 (Assault With Intent to Commit Murder; Attempted Murder) and 2A2.2 (Aggravated Assault) to clarify that the bodily injury enhancement applies when any victim within the parameters of § 1B1.3 (Relevant Conduct), not necessarily the victim established by the offense of conviction, sustains injury from the assault. The current language has resulted in a conflict among the circuits with respect to this issue.

Proposed Amendment: Section 2A2.1(b)(1)(A) is amended by deleting "the victim" and inserting in lieu thereof "a victim".

Section 2A2.1(b)(1)(B) is amended by deleting "the victim" and inserting in lieu thereof "a victim".

Section 2A2.2(b)(3) is amended by deleting "the victim" and inserting in lieu thereof "a victim".

(C). *Synopsis of Proposed Amendment:* This amendment conforms §§ 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), 2B3.1 (Robbery), 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), and 2E2.1 (Making or Financing an Extortionate Extension of Credit; Collecting an Extension of Credit by Extortionate Means), each of which contains enhancements for physical injury but not death, to the structure of the kidnapping guideline, which provides a cross reference to § 2A1.1 (First Degree Murder) where the victim is murdered in the course of the offense.

Proposed Amendment: Section 2A3.1 is amended by inserting the following additional subsection:

> "(c) Cross Reference
>
> (1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder).".

Section 2B3.1 is amended by inserting the following additional subsection:

> "(c) Cross Reference
>
> (1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder).".

Section 2B3.2(c) is amended by renumbering subsection (c)(1) as (c)(2); by inserting the following additional subdivision:

> "(1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder).";

and in the caption by deleting "Reference" and inserting in lieu thereof "References".

Section 2E2.1 is amended by inserting the following additional subsection:

> "(c) Cross Reference
>
> (1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder).".

(D). *Synopsis of Proposed Amendment:* This amendment clarifies that subsections (b)(7) and (c)(1) of § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint), subsections (b)(3) and (c)(1) of § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), and subsections (b)(5) and (c)(1) of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) apply to federal, state, and local offenses. The appellate courts have so held uniformly, but considerable litigation and questions regarding this issue continue.

Proposed Amendment: The Commentary to § 2A4.1 captioned "Background" is amended in the third paragraph by deleting:

> "or to facilitate the commission of another offense. Should the application of this guideline result in a penalty less than the result achieved by applying the guideline for the underlying offense, apply the guideline for the underlying offense (e.g., § 2A3.1, Criminal Sexual Abuse).",

and inserting in lieu thereof:

> "(subsection (b)(1)) or involves another federal, state, or local offense that results in a greater offense level (subsections (b)(7) and (c)(1)).".

The Commentary to § 2K1.3 captioned "Application Notes" is amended in Note 4 by inserting "(federal, state, or local)" immediately following "offense".

The Commentary to § 2K1.3 captioned "Application Notes" is amended in Note 8 by inserting "(which may be a federal, state, or local offense)" immediately before "is".

The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 7 by inserting "(federal, state, or local)" immediately following "offense".

The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 14 by inserting "(which may be a federal, state, or local offense)" immediately before "is".

(E). *Synopsis of Proposed Amendment:* This amendment substitutes the term "offense involved" (standard guideline terminology that includes all relevant conduct) for the term "defendant" (a term with a narrower scope) in subsection (a)(1) of § 2A5.2 (Interference with Flight Crew Member or Flight Attendant) and subsections (b) (1) and (2) of subsection 2A6.1 (Threatening Communications).

Proposed Amendment: Section 2A5.2(a)(1) is amended by deleting "defendant intentionally endangered" and inserting in lieu thereof "offense involved intentionally endangering".

Section 2A5.2(a)(2) is amended by deleting "defendant recklessly endangered" and inserting in lieu thereof "offense involved recklessly endangering".

Section 2A6.1(b)(1) is amended by deleting "defendant engaged in" and inserting in lieu thereof "offense involved".

Section 2A6.1(b)(2) is amended by deleting "defendant's conduct" and inserting in lieu thereof "offense".

(F). *Issue for Comment:* The Commission solicits comment on whether § 2A6.1 (Threatening Communications) should be amended to provide that multiple instances of threatening communications to the same victim on different occasions are separate harms and, therefore, not grouped together under § 3D1.2, and, if so, whether any additional revisions to this guideline are required.

(G). *Synopsis of Proposed Amendment:* This amendment makes the definition of loss in §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) and 2F1.1 (Fraud and Deceit) more consistent.

Application Note 3 of the Commentary to § 2B1.1 and Application Note 8 of the Commentary to § 2F1.1 address the same issue using different language. Although the term "reasonably reliable information" is deleted from § 2B1.1 (there is no corresponding term in § 2F1.1), no substantive change results because the reliability of the information considered in respect to all cases is already addressed in § 6A1.3 (Resolution of Disputed Factors).

In addition, this amendment provides additional guidance for the determination of loss in cases that are referenced to § 2B1.1 but have loss characteristics closely resembling offenses referenced to § 2F1.1, and provides additional guidance for cases in which simply adding the amounts from a series of transactions does not reflect the amount taken or put at risk.

This amendment also clarifies the operation of § 2F1.1(b)(3), which currently can be read to authorize counting conduct that is also addressed by other guideline sections. Consequently, questions arise such as whether a defendant who was on probation at the time of the offense receives an enhancement under this subsection as well as from § 4A1.1; or whether a defendant who commits the offense while on release receives an enhancement under this section as well as under § 2J1.7. This amendment addresses this issue in a manner consistent with the Commission's general principle on double counting.

In addition, the reference in current Application Note 11 of the Commentary to § 2F1.1 is not clear. This amendment clarifies the operation of this provision and conforms the language to the phraseology used elsewhere in the guidelines.

In addition, this amendment clarifies the meaning of the term "infringing items" in §§ 2B5.3 (Criminal Infringement of Copyright) and 2B5.4 (Criminal Infringement of Trademark). Staff have reported repeated questions on this issue.

Finally, this amendment clarifies the operation of § 2B6.1 (Altering or Removing Motor Vehicle Identification Numbers, or Trafficking in Motor Vehicles or Parts with Altered or Obliterated Identification Numbers). In *United States* v. *Thomas* (5th Cir. 9/16/92), a panel of the Fifth Circuit interpreted this phrase to mean that once the retail value of the stolen vehicles or parts exceeded $2,000, the court should apply the fraud table based upon "loss," rather than "retail value." This interpretation is inconsistent with the way this phrase is used throughout the guidelines. For example, § 2B5.1 (Counterfeiting) references the table in § 2F1.1, but the amount to be used is the face value of the counterfeit currency, not "loss"; § 2B5.3 (Criminal Infringement of a Copyright) references the table in § 2F1.1, but the amount to be used is the retail value of the infringing items, not "loss."

Proposed Amendment: The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 2 by inserting the following additional sentence as the fourth sentence: "Loss does not include the interest that could have been earned had the funds not been stolen.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by deleting Note 3 in its entirety and inserting in lieu thereof:

> "3. For the purposes of subsection (b)(1), the loss need not be determined with precision. The court need only make a reasonable estimate of the loss, given the available information. This estimate, for example, may be based upon the approximate number of victims and the average loss to each victim, or on more general factors such as the scope and duration of the offense.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 2 by inserting the following additional paragraphs at the end:

> "Where the offense involved making a fraudulent loan or credit card application, or other unlawful conduct involving a loan or credit card, the loss is to be determined under the principles set forth in the Commentary to § 2F1.1 (Fraud and Deceit).
>
> In certain cases, an offense may involve a series of transactions without a corresponding increase in loss. For example, a defendant may embezzle $5,000 from a bank and conceal this embezzlement by shifting this amount from one account to another in a series of nine transactions over a six-month period. In this example, the loss is $5,000 (the amount taken), not $45,000 (the sum of the nine transactions), because the additional transactions did not increase the actual or potential loss.".

Section 2F1.1(b)(3) is amended by inserting "not addressed elsewhere in the guidelines" immediately following "process".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 5 by inserting the following additional sentence at the end:

> "This subsection does not apply to conduct addressed elsewhere in the guidelines; e.g., a violation of a condition of release (addressed in § 2J1.7 (Offense Committed While on Release)) or a violation of probation (addressed in § 4A1.1 (Criminal History Category)).".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 7(b) in the second paragraph by inserting the following additional sentence at the end:

> "Where the loss determined above significantly overstates or understates the seriousness of the defendant's conduct, an upward or downward departure may be warranted.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 10 by inserting the following additional sentence at the end:

> "In such cases, a downward departure may be warranted.".

The commentary to § 2F1.1 captioned "Application Notes" is amended in Note 11 by deleting the last two sentences and inserting in lieu thereof:

> "Where the primary purpose of the offense involved the unlawful production, transfer, possession, or use of identification documents for the purpose of violating, or assisting another to violate, the laws relating to naturalization, citizenship, or legal resident status, apply §§ 2L2.1, 2L2.2, 2L2.3, or 2L2.4, as appropriate, rather than § 2F1.1. In the case of an offense involving false identification documents or access devices, an upward departure may be warranted where the actual loss does not adequately reflect the seriousness of the conduct.".

The Commentary to § 2B5.3 is amended by inserting the following additional subdivision immediately before "Background":

> "Application Note:
>
> 1. 'Infringing items' means the items that violate the copyright laws (not the legitimate items that are infringed upon).".

The Commentary to § 2B5.4 is amended by inserting the following additional subdivision immediately before "Background":

> *"Application Note:*
>
> 1. 'Infringing items' means the items that violate the trademark laws (not the legitimate items that are infringed upon).".

The Commentary to § 2B6.1 captioned "Application Note" is amended in the caption by deleting "Note" and inserting in lieu thereof "Notes"; and by inserting the following additional Note:

> "2. The 'corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit),' as used in subsection (b)(1), refers to the number of levels corresponding to the retail value of the motor vehicles or parts involved.".

(H). *Synopsis of Proposed Amendment:* Under certain statutes addressing extortion and blackmail, the count of conviction may not be specific enough to distinguish the appropriate guideline under the provisions of § 1B1.2 (Applicable Guidelines). This amendment revises § 2B3.3 (Blackmail and Similar Forms of Extortion) so that in such cases the appropriate guideline will be selected on the basis of the underlying offense.

Proposed Amendment: Section 2B3.3 is amended by inserting the following additional subsection:

> "(c) Cross References
>
> (1) If the offense involved extortion under color of official right, apply § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right).
>
> (2) If the offense involved extortion by force or threat of injury or serious damage, apply § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).".

(I). *Synopsis of Proposed Amendment:* This amendment makes conforming changes pertaining to the interaction of Chapter Two (Offense Conduct) and Chapter Eight (Sentencing of Organizations). The amendment conforms the language of the special instructions in §§ 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan), and 2E5.6 (Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations) to the language of subsection (c)(3) of § 8C2.4 (Base Fine). In addition, the amendment adds a conforming special fine instruction at §§ 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper) and 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions). Further, in § 2R1.1, this amendment moves the test for determining an organization's volume of commerce in a bid-rigging case in which the organization submitted one or more complementary bids to subsection (b) where it logically fits. Finally, the amendment extends to individual defendants the same standard for determining the volume of commerce in a bid-rigging case involving complementary bids as is now used for organizational defendants.

Proposed Amendment: Section 2B4.1(c)(1)(C) is amended by inserting "reasonably foreseeable" immediately before "consequential".

Section 2C1.6 is amended by inserting the following additional subsection:

"(c) Special Instruction for Fines—Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the value of the unlawful payment.".

Section 2C1.7 is amended by inserting the following additional subsection:

"(d) Special Instruction for Fines—Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the greatest of: (A) the value of the unlawful payment; (B) the value of the benefit received or to be received in return for the unlawful payment; or (C) the reasonably foreseeable consequential damages resulting from the unlawful payment.".

Section 2E5.1(c)(1)(C) is amended by inserting "reasonably foreseeable" immediately before "consequential".

Section 2E5.6(c)(1)(C) is amended by inserting "reasonably foreseeable" immediately before "consequential".

Section 2R1.1 is amended in subdivision (b)(2) by inserting at the end the following:

"In a bid-rigging case in which an individual or an organization submitted one or more complementary bids, use as the individual's or the organization's volume of commerce the greater of (A) the volume of commerce done by the individual or the organization in the goods or services that were affected by the violation, or (B) the largest contract on which the individual or the organization submitted a complementary bid in connection with the bid-rigging conspiracy.".

Section 2R1.1 is amended in subsection (d) by deleting subdivision (d)(3) as follows:

"(3) In a bid-rigging case in which the organization submitted one or more complementary bids, use as the organization's volume of commerce the greater of (A) the volume of commerce done by the organization in the goods or services that were affected by the violation, or (B) the largest contract on which the organization submitted a complementary bid in connection with the bid-rigging conspiracy.".

Proposed Amendment and Issue for Comment Published at the Request of the Criminal Law Committee of the Judicial Conference of the United States

29. *Synopsis of Proposed Amendment:* This amendment to the Introductory Commentary of Chapter Five, Part H (Specific Offender Characteristics) provides that departures may be appropriate when offender characteristics are present to an unusual degree and combined in ways important to the purposes of sentencing.

Proposed Amendment: The Introductory Commentary to § 5H1.1 is amended by inserting the following additional paragraph as the third paragraph:

"Offender characteristics that are not ordinarily relevant to determining whether a sentence should be outside the guidelines may be considered if such factors, alone or in combination, are present to an unusual degree and are important to the sentencing purposes in the particular case.".

30. *Issue for Comment:* The Commission invites comment on whether language in Chapter One, Part A 4(b) (Departures) can be read as overly restrictive of a court's ability to depart and, if so, how this language might be amended.

Proposed Amendment and Issues for Comment Published at the Request of the American Bar Association Sentencing Guidelines Committee

31. *Synopsis of Proposed Amendment:* This amendment revises § 5K1.1 (Substantial Assistance to Authorities) to authorize a court to depart, based upon the defendant's substantial assistance, whether or not the government makes a motion for such a departure (in cases not governed by a mandatory minimum sentencing statute). (Related amendment proposals: 24 and 47).

Proposed Amendment: Section 5K1.1 is amended by deleting "Upon motion of the government stating that" and inserting in lieu thereof "If".

32. *Issue for Comment:* The Commission invites comment as to whether it should promulgate an amendment that would allow a court to impose a sentence other than imprisonment in the case of a first offender convicted of a non-violent or otherwise non-serious offense and, if so, whether this should be accomplished either by (A) providing an additional ground for departure in Chapter Five, Part K or by (B) increasing the number of offense levels in Zone A in Criminal History Category I.

33. *Issue for Comment:* The Commission invites comment on whether it should increase the availability of the type of sentences provided for in Zones A and B of Chapter Five, Part A (Sentencing Table) to more offense levels within all Criminal History categories.

34. *Issue for Comment:* The Commission invites comment on whether it should amend section 1B1.3 (Relevant Conduct) so as to restrict the court's consideration of conduct that is relevant to determining the applicable guideline range to (A) conduct that is admitted by the defendant in connection with a plea of guilty or nolo contendere and/or (B) conduct that constitutes the elements of the offense of which the defendant was convicted. (Related amendment proposals: 1 and 35).

Proposed Amendments and Issues for Comment Published at the Request of the Practitioners' Advisory Group

35. *Synopsis of Proposed Amendment:* This amendment addresses the consideration of conduct of which the defendant has been acquitted after trial under § 1B1.3 (Relevant Conduct). (Related amendment proposals: 1 and 34).

Proposed Amendment: Section 1B1.3 is amended by inserting the following additional subsection:

[Option 1: "(c) Conduct of which the defendant has been acquitted after a court or jury trial shall not be considered under this section.".]

[Option 2: "(c) Conduct of which the defendant has been acquitted after a court or jury trial shall not be considered under this section unless the Government proves by clear and convincing evidence that the defendant has committed the conduct for which he/she has been acquitted.".]

36. *Synopsis of Proposed Amendment:* This amendment adds commentary to § 6B1.2 (Standards for Acceptance of Plea Agreements) to encourage plea negotiations that realistically reflect the probable outcome under the sentencing guidelines. (Related amendment proposal: 25).

Proposed Amendment: The Commentary to § 6B1.2 is amended by inserting the following additional paragraph at the end:

"The Commission encourages the government prior to the entry of a guilty plea or nolo contendere plea under Rule 11 of the Federal Rules of Criminal Procedure to disclose to the defendant the facts and circumstances of the offense and offender characteristics, then known to the government, that are relevant to the application of the sentencing guidelines.".

37. *Issue for Comment:* The Commission invites comment on whether the commentary to § 2B1.1 should be conformed to § 2F1.1 by stating that: (A) The amount of the loss is the actual or intended loss, whichever is greater; (B) loss figures should be reduced to reflect the amount the victim has recovered prior to discovery of the offense or which the victim expects to recover from any assets originally pledged by the defendant; and (C) the loss may in some cases significantly overstate or understate the seriousness of the defendant's conduct. In such cases, a departure from the guidelines may be considered. (Related amendment proposals: 6 and 7).

38. *Issue for Comment:* The Commission invites comment on whether § 2B1.1 should contain specific offense characteristics adjusting a defendant's offense level downward because he did not personally profit from the theft (e.g., an accountant who is aware of embezzlement by a company president, but does not personally gain), and whether there should be a cap on the offense level for minor or minimal participants sentenced under § 2B1.1.

39. *Synopsis of Proposed Amendment:* This amendment reduces the maximum offense level for drug quantity from 42 to 36 (36 was the maximum offense level in the original sentencing guidelines); provides additional enhancements for weapon usage, principal organizers of large scale organizations, and obtaining substantial resources from engaging in the criminal activity by a defendant with an aggravating role; places a cap on the offense level for defendants with mitigating roles; reduces the offense levels associated with higher drug quantities by 2 levels; provides a greater reduction for a significantly minimal participant; and provides additional guidance for the determination of mitigating role. (Related amendment proposals: 8, 9, 48, and 60).

Proposed Amendment: Section 2D1.1(a)(3) is amended by inserting the following at the end:

"Provided, that if the defendant qualifies for a mitigating role adjustment pursuant to § 3B1.2 (Mitigating Role) and the offense involves any of the controlled substances listed below, the base offense level shall not exceed level 32:

(a) Heroin;
(b) Cocaine;
(c) Cocaine Base;
(d) Phencyclidine (PCP);
(e) Lysergic Acid Diethylamide (LSD);
(f) N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
(g) Marihuana;
(h) Methamphetamine.

Provided, that if the offense involves any controlled substance other than those listed in subparagraphs (a) through (g) above, and the defendant qualifies for a mitigating role adjustment pursuant to § 3B1.2 (Mitigating Role), the base offense level shall not be greater than level 24. If an offense involves both the above listed controlled substances and other controlled substances, apply the offense level specified in the Drug Quantity Table set forth in subsection (c) below, but the base offense level shall not exceed 32 if the defendant qualifies for a mitigating role adjustment pursuant to § 3B1.2 (Mitigating Role).".

Section 2D1.1(b) is deleted and the following inserted in lieu thereof:

"(b) Specific Offense Characteristics

(1) If a dangerous weapon (including a firearm) was actually possessed by the defendant, or the defendant induced or directed another participant to actually possess a dangerous weapon, increase by 2 levels.

(2) If a dangerous weapon (including a firearm) was actually brandished or displayed or fired by the defendant, or the defendant induced or directed another participant to brandish, display, or fire a dangerous weapon, increase by 4 levels.

(3) If a dangerous weapon (including a firearm) was actually used by the defendant and as a result someone other than the defendant received serious bodily injury, or if the defendant induced or directed another participant to use a dangerous weapon and someone other than that participant received serious bodily injury, or if the defendant created a substantial risk of death or serious bodily injury, or induced or directed another participant to participate in activity that created a substantial risk of death or serious bodily injury, increase by 6 levels.

(4) If the defendant is convicted of violating 21 U.S.C. 960(a) under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import the controlled substance, or (B) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by 2 levels. If the resulting offense level is less than level 26, increase to level 26.

(5) If the defendant was the principal organizer or leader of criminal activity that involved 15 or more participants, increase by 2 levels.

(6) If the defendant engaged in criminal activity from which he obtained substantial income or resources, and the defendant qualifies for an aggravating role adjustment pursuant to § 3B1.1 (Aggravating Role), increase by 2 levels.".

Section 2D1.1(c) is amended by deleting subdivisions 1–11; by renumbering subdivisions 12–19 as 9–16; and by inserting the following as subdivisions 1–8:

Level 36

"(1) At least 30 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);
At least 150 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
At least 1.5 KG of Cocaine Base;
At least 30 KG of PCP, or at least 3 KG of PCP (actual);
At least 30 KG of Methamphetamine, or at least 3 KG of Methamphetamine (actual), or at least 3 KG of "Ice";
At least 300 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
At least 12 KG of Fentanyl;
At least 3 KG of a Fentanyl Analogue;
At least 30,000 KG of Marihuana;
At least 6,000 KG of Hashish;
At least 600 KG of Hashish Oil.

Level 34

(2) At least 10 KG but less than 30 KG or more of Heroin (or the equivalent amount of other Schedule I or II Opiates);
At least 50 KG but less than 150 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
At least 500 G but less than 1.5 KG of Cocaine Base;
At least 10 KG but less than 30 KG of PCP or at least 1 KG but less than 3 KG of PCP (actual);
At least 10 KG but less than 30 KG of Methamphetamine, or at least 1 KG but less than 3 KG or more of Methamphetamine (actual), or at least 1 KG but less than 3 KG or more of "Ice";
At least 100 G but less than 300 G or more of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
At least 4 KG but less than 12 KG or more of Fentanyl;
At least 1 KG but less than 3 KG or more of a Fentanyl Analogue;
At least 10,000 KG but less than 30,000 KG or more of Marihuana;
At least 2,000 KG but less than 6,000 KG or more of Hashish;
At least 200 KG but less than 600 KG or more of Hashish Oil.

Level 32

(3) At least 3 KG but less than 10 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);
At least 15 KG but less than 50 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
At least 150 G but less than 500 G of Cocaine Base;
At least 3 KG but less than 10 KG of PCP, or at least 300 G but less than 1 KG of PCP (actual);
At least 3 KG but less than 10 KG of Methamphetamine, or at least 300 G but less than 1 KG of Methamphetamine (actual), or at least 300 G but less than 1 KG of "Ice";
At least 30 G but less than 100 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
At least 1.2 KG but less than 4 KG of Fentanyl;
At least 300 G but less than 1 KG of Fentanyl Analogue;
At least 3,000 KG but less than 10,000 KG of Marihuana;
At least 600 KG but less than 2,000 KG of Hashish;
At least 60 KG but less than 200 KG of Hashish Oil.

Level 30

(4) At least 1 KG but less than 3 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 5 KG but less than 15 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 50 G but less than 150 G of Cocaine Base;

At least 1 KG but less than 3 KG of PCP, or at least 100 G but less than 300 G of PCP (actual);

At least 1 KG but less than 3 KG of Methamphetamine, or at least 100 G but less than 300 G of Methamphetamine (actual), or at least 100 G but less than 300 G of "Ice"; at least 10 G but less than 30 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 400 G but less than 1.2 KG of Fentanyl;

At least 100 G but less than 300 G of a Fentanyl Analogue;

At least 1,000 KG but less than 3,000 KG of Marihuana;

At least 200 KG but less than 600 KG of Hashish;

At least 20 KG but less than 60 KG of Hashish Oil.

Level 28

(5) At least 700 G but less than 1 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 3.5 KG but less than 5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 35 G but less than 50 G of Cocaine Base;

At least 700 G but less than 1 KG of PCP, or at least 70 G but less than 100 G of PCP (actual);

At least 700 G but less than 1 KG of Methamphetamine, or at least 70 G but less than 100 G of Methamphetamine (actual), or at least 70 G but less than 100 G of "Ice";

At least 7 G but less than 10 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 280 G but less than 400 G of Fentanyl;

At least 70 G but less than 100 G of Fentanyl Analogue;

At least 700 KG but less than 1,000 KG of Marihuana;

At least 140 KG but less than 200 KG of Hashish;

At least 14 KG but less than 20 KG of Hashish Oil.

Level 26

(6) At least 400 G but less than 700 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 2 KG but less than 3.5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 20 G but less than 35 G of Cocaine Base;

At least 400 G but less than 700 G of PCP, or at least 40 G but less than 70 G of PCP (actual);

At least 400 G but less than 700 G of Methamphetamine, or at least 40 G but less than 70 G of Methamphetamine (actual), or at least 40 G but less than 70 G of "Ice";

At least 4 G but less than 7 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 160 G but less than 280 G of Fentanyl;

At least 40 G but less than 70 G of a Fentanyl Analogue;

At least 400 KG but less than 700 KG of Marihuana;

At least 80 KG but less than 140 KG of Hashish;

At least 8 KG but less than 14 KG of Hashish Oil.

Level 24

(7) At least 100 G but less than 400 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 500 G but less than 2 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 5 G but less than 20 G of Cocaine Base;

At least 100 G but less than 400 G of PCP, or at least 10 G but less than 40 G of PCP (actual);

At least 100 G but less than 400 G of Methamphetamine, or at least 10 G but less than 40 G of Methamphetamine (actual), or at least 10 G but less than 40 G of "Ice";

At least 1 G but less than 4 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 40 G but less than 160 G of Fentanyl;

At least 10 G but less than 40 G of a Fentanyl Analogue;

At least 100 KG but less than 400 KG of Marihuana;

At least 20 KG but less than 80 KG of Hashish;

At least 2 KG but less than 8 KG of Hashish Oil.

Level 22

(8) At least 70 G but less than 100 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 350 but less than 500 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 3.5 G but less than 5 G of Cocaine Base;

At least 70 G but less than 100 G of PCP, or at least 7 G but less than 10 G of PCP (actual);

At least 70 G but less than 100 G of Methamphetamine, or at least 7 G but less than 10 G of Methamphetamine (actual), or at least 7 G but less than 10 G of "Ice";

At least 700 MG but less than 1,000 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 28 G but less than 40 G of Fentanyl;

At least 7 G but less than 10 G of a Fentanyl Analogue;

At least 70 KG but less than 100 KG of Marihuana;

At least 14 KG but less than 20 KG of Hashish;

At least 1.4 KG but less than 2 KG of Hashish Oil.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following additional note:

"16. In defining substantial income or resources the Court should refer to the body of definitional law that has developed in interpreting title 21 U.S.C. 848(c)(2)(B).".

Section 3B1.2 is deleted in its entirety and the following inserted in lieu thereof:

"§ 3B1.2. Mitigating Role

Based on the defendant's role in the offense, decrease the offense level as follows:

(a) If the defendant was a significantly minimal participant in any criminal activity, decrease by 6 levels.

(b) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels.

(c) If the defendant was a minor participant in any criminal activity, decrease by 2 levels.

In cases falling between (a) and (b), decrease by 5 levels.

In cases falling between (b) and (c), decrease by 3 levels.

Commentary

Application Notes:

1. This section provides a downward adjustment in offense level for a defendant who has a significantly minimal role (6-level reduction), a minimal role (4-level reduction) or a minor role (2-level reduction) in the criminal activity for which the defendant is accountable under § 1B1.3 (Relevant Conduct). In cases falling between (a) and (b), a 5-level reduction is provided, and in cases falling between (b) and (c), a 3-level reduction is provided.

2. To determine whether a defendant warrants a mitigating (significantly minimal, minimal, or minor) role adjustment requires an assessment of the defendant's role and relative culpability in comparison with the other participants in the criminal activity for which the defendant is accountable pursuant to § 1B1.3 (Relevant Conduct). The fact that the conduct of one participant warrants an upward adjustment for an aggravating role (§ 3B1.1) or warrants no adjustment, does not necessarily mean that another participant must be assigned a downward adjustment for a mitigating (significantly minimal, minimal, or minor) role. See the definition of "participant" in Note 1 of § 3B1.1.

3. Subsection (a) (6-level reduction) applies to a defendant who plays a significantly minimal role in concerted activity. To qualify for significantly minimal role under subsection (a), the defendant must be the least culpable of the participants in the criminal activity. Such defendants ordinarily must have all of the characteristics consistent with a mitigating role listed in Note 6 and must be the least culpable. If more than one defendant equally qualifies as the least culpable, both defendants qualify for this reduction.

4. Subsection (b) (4-level reduction) applies to a defendant who plays a minimal role in concerted activity. To qualify for a minimal role adjustment under subsection (b), the defendant plainly must be one of the least culpable, but not the least culpable, of the participants in the criminal activity. Such defendants ordinarily must have all of the characteristics consistent with a mitigating

(significantly minimal, minimal, or minor) role listed in Note 6.

5. To qualify for a minor role adjustment under subsection (c) (2-level reduction), the defendant plainly must be one of the less culpable participants in the criminal activity, but have a role that cannot be described as minimal.

6. The following is a non-exhaustive list of characteristics that ordinarily are associated with a mitigating (significantly minimal, minimal, or minor) role:

(a) the defendant performed only unskilled and unsophisticated tasks;

(b) the defendant had no decision-making authority or responsibility;

(c) total compensation to the defendant must be small in relation to the compensation or gain realized by those persons who do not have a mitigating role in the offense and should ordinarily not exceed $5,000 and generally should be paid as a flat fee; and

(d) the defendant did not exercise any supervision over other participant(s).

7. With regard to offenses involving contraband (including controlled substances, a defendant who

(a) sold, or negotiated the terms of the sale of, the contraband;

(b) had an ownership interest in any portion of the contraband;

(c) financed any aspect of the criminal activity; or

(d) transported contraband

shall not receive a mitigating (significantly minimal, minimal, or minor) role adjustment below the Chapter Two offense level that the defendant would have received for the quantity of contraband that the defendant sold, negotiated, owned, or transported, or for that aspect of the criminal activity that the defendant financed because, with regard to those acts, the defendant has acted as neither a significantly minimal, minimal, or minor participant. For example, a street dealer who sells 100 grams of cocaine and who is held accountable under § 1B1.3 (Relevant Conduct) for only that quantity shall not be considered for a mitigating (significantly minimal, minimal, or minor) role adjustment. In contrast, a street dealer who sells 100 grams of cocaine, but who is held accountable, pursuant to § 1B1.3, for a jointly undertaken criminal activity involving 5 kilograms of cocaine may, if otherwise qualified, be considered for a mitigating (significantly minimal, minimal, or minor) role adjustment, but the resulting offense level may not be less than the Chapter Two offense level for the 100 grams of cocaine that the defendant sold.

8. Consistent with the structure of the guidelines, the defendant bears the burden of persuasion in establishing entitlement to a mitigating (significantly minimal, minimal, or minor) role adjustment. In determining whether a mitigating (significantly minimal, minimal or minor) role adjustment is warranted, the court should consider all of the available facts, including any information arising from the circumstances of the defendant's arrest that may be relevant to a determination of the defendant's role in the offense. In weighing the totality of the circumstances, a court may consider a defendant's assertion of facts that supports a mitigating role adjustment. However, a court is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted.

Background: This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant. The determination whether to apply subsection (a), subsection (b) or subsection (c), or an intermediate adjustment, involves a determination that is heavily dependent upon the facts of the particular case.".

40. *Issue for Comment:* The Commission invites comment on whether pursuant to 28 U.S.C. 944(w) the Commission should ask Congress to modify or eliminate the provisions that distinguish between the punishment for powdered cocaine and cocaine base (crack) at the quantity ratio of 100 to 1. Critics argue that little scientific support for a 100 to 1 ratio exists and emphasize that the racial make-up for crack defendants is predominantly black (92.6%) while powdered cocaine defendants are predominantly non-black (70.3%). Given the maxim that the appearance of fairness is almost as important as fairness itself, these critics indicate that the evidence supports the elimination of the 100 to 1 quantity ratio.

Comment is further invited as to whether a change is appropriate in the quantity-based guidelines system for cocaine base (crack) for offenses involving the distribution or possession of amounts above the 10-year mandatory minimum level (50 grams) and below the 5-year mandatory minimum level (5 grams) in that the legislative history of this section of the 1986 Crime Control Act indicates that the mandatory minimum was designed to target street-level dealers who possess small quantities of cocaine base (crack). Critics argue that a quantity-based sentencing system for all defendants who possess or distribute cocaine base (crack) increases the sentencing range of defendants in a particularly harsh manner beyond those targeted by Congress.

Finally, comment is invited as to whether any guidelines distinction as opposed to mandatory minimum distinction needs to be drawn between cocaine and cocaine base (crack) in light of the fact that the legislative history targets only street dealers and the mandatory minimums successfully provided significantly increased punishment for those targets while the quantity-based guidelines system for cocaine base (crack) increases the range of defendants targeted resulting in particularly harsh sentences for defendants who happen to be black.

Proposed Amendments Published at the Request of the Internal Revenue Service

41. *Synopsis of Proposed Amendment:* This amendment consolidates current §§ 2T1.1, 2T1.2, 2T1.3, and 2T1.5 into one offense guideline, increases the minimum base offense levels for offenses currently covered by §§ 2T1.1 and 2T1.3 from level 6 to level 10, increases the minimum offense level for offenses currently covered by § 2T1.2 from level 5 to level 9, adopts a uniform definition of tax loss, and creates a new offense guideline to cover violations of the omnibus clause of 26 U.S.C. § 7212(a). (Related amendment proposal: 21).

Proposed Amendment: Sections 2T1.1 through and including 2T1.9 are deleted and the following inserted in lieu thereof (Note: unless otherwise provided, the Commentary applicable to each guideline is unchanged):

"§ 2T1.1. Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents.

(a) Base Offense Level:

(1) if the defendant is convicted of tax evasion, 10.

(2) if the defendant is convicted of filing fraudulent or false statements under penalty of perjury, 10;

(3) if the defendant is convicted of failure to file a return, supply information, or pay tax, 9;

(4) if the defendant is convicted of the misdemeanor of filing fraudulent returns, statements, or other documents not required to be signed under penalty of perjury, 6;

(b) Specific Offense Characteristics

(1) If the "tax loss" exceeded $10,000, increase the offense level as follows:

Tax loss	Increase in level
(A) $10,000 or less	No increase.
(B) More than $10,000	Add 1.
(C) More than $20,000	Add 2.
(D) More than $40,000	Add 4.
(E) More than $70,000	Add 5.
(F) More than $120,000	Add 6.
(G) More than $200,000	Add 7.
(H) More than $350,000	Add 8.
(I) More than $500,000	Add 9.
(J) More than $800,000	Add 10.

For purposes of the guidelines in Part T, Offenses Involving Taxation, "tax loss" shall mean the loss that was the object of the evasion or fraud.

(2) If the defendant failed to report or to correctly identify the source of income exceeding $10,000 in any year from criminal activity, increase by 2 levels.

(3) If sophisticated means were used to impede discovery of the nature or extent of the offense, increase by 2 levels.

Statutory Provisions: 26 U.S.C. 7201, 7203 (other than a willful violation of 26 U.S.C.

6050I), 7206 (other than a willful violation of 26 U.S.C. 6050I and not including § 7206(2)) and 7207.

Application Notes:

1. For purposes of this guideline, the tax loss is the amount of loss that was the object of the evasion or fraud. The amount of loss that would have resulted had the scheme or fraud succeeded is properly considered the amount of loss that was the object of the scheme or fraud. The success or failure of a tax evasion or fraud scheme is irrelevant. In typical circumstances, loss should be calculated as indicated in the following examples:

(i) If the offense involved improperly claiming a deduction or an exemption or causing another to improperly claim a deduction or exemption, the tax loss shall be the amount of the improper deduction or exemption multiplied by the applicable tax rate(s).

(ii) If the offense involved filing a return in which gross income was underreported, the tax loss shall be the amount of income omitted from the return multiplied by the applicable tax rate(s).

(iii) If the offense involved improperly claiming a deduction designed to provide a basis for tax evasion or tax fraud in the future, the tax loss shall be the amount of the deduction multiplied by the applicable tax rate for the tax year for which the return was filed.

(iv) If the offense involved failing to file a tax return, the tax loss shall be gross income minus the applicable amount for personal exemption(s) and the amount of the applicable standard deduction, multiplied by the applicable tax rate(s).

(v) If the offense involved improperly claiming a tax credit (i.e., an item that reduces the amount of tax directly), the tax loss is the amount of the improper tax credit.

(vi) If the offense involved improperly claiming a refund to which the claimant was not entitled, the tax loss shall be the amount of the claimed refund.

2. In calculating tax loss, there shall be a rebuttable presumption that the tax loss is the amount calculated under these provisions. If the defendant provides credible evidence that the actual tax loss in the case was different than the amount calculated under these provisions, the tax loss shall be the actual amount established by the defendant. However, the defendant may not attempt to show that the actual tax loss was less than the amount calculated under these provisions by asserting that the intended loss was less than that which would have resulted had the scheme succeeded.

3. In calculating tax loss, the court should utilize as many of the methods set forth in paragraph 1. as fit the circumstances of the case and as most nearly approximate the greatest harm that would have resulted had the scheme succeeded. Where none of the methods of calculating loss fits the circumstances of the particular case, the court should utilize any method that appears appropriate to most nearly calculate the loss that would have resulted had the scheme succeeded.

Delete application note 4 and renumber existing application note 3 as application note 4.

§ 2T1.2. Failing to Collect or Truthfully Account for and Pay Over Tax

(a) Base Offense Level: 10

(b) Specific Offense Characteristic

(1) If the amount of tax not collected or accounted for and paid over exceeds $10,000, increase the offense level as specified in § 2T1.1.

(c) Cross Reference

(1) Where the offense involved embezzlement by withholding tax from an employee's earnings and willfully failing to account to the employee for it, apply § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) if the resulting offense level is greater than determined above.

Statutory Provision: 26 U.S.C. 7202.

§ 2T1.3. Offenses Relating to Withholding Statements

(a) Base Offense Level: 4

Statutory Provision: 26 U.S.C. §§ 7204, 7205.

§ 2T1.4. Aiding, Assisting, Procuring, Counseling or Advising Tax Fraud

(a) Base Offense Level: 10

(b) Specific Offense Characteristics

(1) If the resulting tax loss as defined in § 2T1.1 exceeds $10,000, increase the offense level as specified in § 2T1.1.

(2) If the defendant committed the offense as part of a pattern or scheme from which he derived a substantial portion of his income, increase by 2 levels.

(3) If sophisticated means were used to impede discovery of the nature or extent of the offense, increase by 2 levels.

(4) If the defendant was in the business of preparing or assisting in the preparation of tax returns, increase by 2 levels.

Statutory Provision: 26 U.S.C. 7206(2).

§ 2T1.5. Corrupt Endeavors

(a) Base Offense Level: 10

(b) Specific Offense Characteristic

(1) If the tax loss as defined in § 2T1.1 exceeds $10,000, increase the offense level as specified in § 2T1.1.

Statutory Provision: 26 U.S.C. 7212(a) (omnibus clause).

Application Notes:

1. This section applies to the omnibus clause of 26 U.S.C. § 7212(a) concerning corrupt endeavors to obstruct or impede the due administration of the internal revenue laws. It does not apply to offenses under 26 U.S.C. § 7212(a) involving corrupt or forcible interference with an officer or employee of the United States acting in an official capacity. Such offenses will be sentenced under § 2A2.2 or § 2A2.3.

§ 2T1.6. Failing to Deposit Collected Taxes in Trust Account as Required After Notice

(a) Base Offense Level: 4

(b) Specific Offense Characteristic

(1) If the amount of tax not deposited exceeds $10,000, increase the offense level as specified in § 2T1.1.

Statutory Provision: 26 U.S.C. 7215, 7212(b).

§ 2T1.7. Conspiracy to Impair, Impede, or Defeat Tax

(a) Base Offense Level: 10

(b) Specific Offense Characteristics

(1) If the tax loss as defined in § 2T1.1 exceeds $10,000 increase the offense level as specified in § 2T1.1.

(2) If the offense involved the planned or threatened use of violence, increase by 4 levels.

(3) If the conduct was intended to encourage persons in addition to co-conspirators to violate the internal revenue laws or impede or impair the Internal Revenue Service in the assessment and collection of revenue, increase by 2 levels.

(4) If sophisticated means were used to impede discovery of the nature or extent of the offense, increase by 2 levels.

Statutory Provision: 18 U.S.C. 371.".

42. *Synopsis of Proposed Amendment:* Option 1 of this amendment increases the offense level for offenses grouped together under § 3D1.2(c) when the count that has the specific offense characteristic requiring such grouping has a lower offense level than the other count. Option 2 adds a 2-level increase in §§ 2D1.1 and 2S1.1 when the defendant fails to report income exceeding $10,000 in any one year.

Proposed Amendment: [Option 1—Section 3D1.3 is amended by inserting the following additional subsection:

"(c) In the case of offense grouped together pursuant to § 3D1.2(c), when the count that has a specific offense characteristic has an offense level less than the offense level applicable to the group under this provision, the offense level determined in (a) shall be increased by two levels.".]

[Option 2—Section 2D1.1(b) is amended by inserting the following additional subdivision:

"(3) If the defendant failed to report income exceeding $10,000 in any year from the unlawful manufacturing, importing, exporting, trafficking, or possession of drugs, increase by 2 levels.".

Section 2S1.1(b) is amended by inserting the following additional subdivision:

"(3) If the defendant failed to report income exceeding $10,000 in any year, increase by two levels.".]

43. *Synopsis of Proposed Amendment:* This amendment revises the multiple-count grouping rules in § 3D1.4 (Determining the Combined Offense Level). Under this amendment, count groups that are nine or more levels less serious than the most serious count group would be assigned one-half unit each. Currently, only count groups that are five to eight levels less serious than the most serious count group

receive one-half unit; count groups that are nine or more levels less serious than the most serious count group are disregarded.

Proposed Amendment: Subsections (b) and (c) of § 3D1.4 are deleted and the following inserted in lieu thereof:

"(b) Count as one-half Unit any Group that is 5 or more levels less serious than the Group with the highest offense level.".

Proposed Amendments Published at the Request of the United States Postal Service

44. *Synopsis of Proposed Amendment:* This amendment increases the offense level for theft of mail by 2 levels in addition to the monetary value of the property stolen. In addition, it provides a minimum offense level of 14 if the offense involved an organized scheme to steal mail.

Proposed Amendment: Section 2B1.1(b)(4) is amended to read as follows: "If undelivered United States mail was taken, increase the base offense level by 2 levels prior to the application of subsection (b)(1).". Section 2B1.1 is amended by inserting the following additional subdivision:

"8. If the offense involved an organized scheme to steal undelivered United States mail, and the offense level determined above is less than level 14, increase to level 14.".

45. *Synopsis of Proposed Amendment:* This amendment creates a new victim-related general adjustment to take into account the increased harm caused when there is more than one victim.

Proposed Amendment: Chapter Three, Part A, is amended by inserting the following addition section:

"**§ 3A1.4. Multiple Victims**

If the offense affected more than one victim, increase the offense level by 2 levels. If the offense affected 100 victims or more, increase the offense level by 2 levels for every 250 victims.

No. of victims	Increase in offense level
2–99	2
100–349	4
350–649	6
650 or more	8

46. *Synopsis of Proposed Amendment:* This amendment adds language to § 3B1.3 (Abuse of a Position of Trust or Use of Special Skill) providing that this enhancement applies to all postal employees in respect to specified offenses. (Related amendment proposal: 23).

Proposed Amendment: The Commentary to § 3B1.3 captioned "Application Notes" is amended in Note 1 by inserting the following additional paragraph at the end:

"This enhancement applies to all postal employees in respect to the following offenses: theft or obstruction of United States mail (18 U.S.C. 1703,1709); embezzlement of Postal Service funds (18 U.S.C. 1711); and theft of Postal Service property (18 U.S.C. 641).".

Proposed Amendments Published at the Request of the Legislative Subcommittee of the Federal Defenders

47. *Synopsis of Proposed Amendment:* This amendment eliminates from § 5K1.1 (Substantial Assistance to Authorities) the language requiring a government motion before the sentencing court can depart. (Related amendment proposals: 24 and 31).

Proposed Amendment: The first sentence of § 5K1.1 is amended to read as follows:

"The court may depart from the guidelines upon a finding that the defendant has substantially assisted in the investigation or prosecution of another person."

48. *Synopsis of Proposed Amendment:* This amendment revises § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) to establish ceilings on the offense level for minor and minimal participants in jointly-undertaken activity. The amendment carries forward the policy of § 3B1.2 to provide a greater reduction for minimal participants than for minor participants and the policy of this guideline to treat certain controlled substances more harshly than others. Thus, the amendment sets a ceiling for minor participants that is higher than the ceiling for minimal participants, and a ceiling for certain controlled substances (e.g., heroin) that is higher than the ceiling for other controlled substances (e.g., marihuana). (Related amendment proposals: 8, 9, 39, and 60).

Proposed Amendment: Section 2D1.1(b) is amended by inserting the following additional subdivisions:

"(3) If the defendant was a minimal participant in the criminal activity upon which the offense of conviction is based, and the offense of conviction involved—

(A) marihuana, hashish, hashish oil, a Schedule I or II depressant, or a Schedule II, IV, or V substance, reduce by 4 levels, but in no event shall the offense level be greater than level 16; or

(B) any other controlled substance, reduce by 4 levels, but in no event shall the offense level be greater than level 20.

(4) If the defendant was a minor participant in the criminal activity upon which the offense of conviction is based, and the offense of conviction involved—

(A) marihuana, hashish, hashish oil, a Schedule I or II depressant, or a Schedule II, IV, or V substance, reduce by 2 levels, but in no event shall the offense level be greater than level 22; or

(B) any other controlled substance, reduce by 2 levels, but in no event shall the offense level be greater than level 26.".

49. *Synopsis of Proposed Amendment:* This amendment clarifies that the weight used to determine the offense level under § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) does not include (1) the weight of a substance that is involved in the manufacture of a controlled substance but that does not become a part of the final product (e.g., waste water that has been used to wash out impurities or to form a precipitate) and (2) the weight of a substance to which the drug is bonded or in which the drug is suspended (e.g., cocaine mixed with beeswax). (Related amendment proposal: 10).

Proposed Amendment: The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 1 by adding at the end thereof the following:

"The term 'mixture or substance' does not include portions of a mixture that are uningestible or unmarketable, or that have to be separated from the controlled substance before the controlled substance can be used. For example, the fiberglass in a cocaine-fiberglass bonded suitcase would not be a part of the mixture, and the weight of the fiberglass would not be used in determining the offense level under this guideline. Similarly, the waste water used in the manufacture of a controlled substance would not be a part of the mixture, and the weight of the water would not be used in determining the offense level under this guideline.".

50. *Synopsis of Proposed Amendment:* This amendment bases the offense levels in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) on the amount of actual LSD involved to eliminate the disparately high offense levels applicable to low-level traffickers in LSD. The dosage quantity of LSD is so small that at present nearly all of the weight used to determine a defendant's punishment comes from the weight of the carrier. Thus, a defendant who has enough pure LSD to produce 65,000 doses has an offense level that is the same as a defendant with blotter paper containing 500 doses of LSD.

Proposed Amendment: The asterisk footnote to subsection (c) of § 2D1.1 is amended by adding after the first paragraph the following new paragraph:

"In determining the weight of LSD, use the actual weight of the LSD itself. The weight

> of any carrier medium (blotter paper, for example) is not to be counted.”.

51. *Synopsis of Proposed Amendment:* The legislative history behind the enactment of strong penalties for “cocaine base” indicates that Congress was targeting the rock form of cocaine that can be smoked and that is marketable in small quantities at a relatively low price. The street name for this substance is “crack”. This amendment specifies that the term “cocaine base” in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) means “crack”.

Proposed Amendment: The asterisk footnote to subsection (c) of § 2D1.1 is amended by adding at the end thereof the following new paragraph:

> “For the purposes of this guideline, the term “cocaine base” means the lumpy, rock-like form of cocaine base usually prepared by processing cocaine Hcl and sodium bicarbonate. ‘Crack’ is the street name for this form of cocaine base.”.

52. *Synopsis of Proposed Amendment:* This amendment requires the sentencing court, where the guidelines make a defendant eligible for a sentence of probation without a confinement condition, to sentence that defendant to probation without a confinement condition unless the court finds that imprisonment is necessary to serve the purposes of sentencing. This amendment also requires the sentencing court, where the guidelines make a defendant eligible for a sentence of probation with a confinement condition, to sentence the defendant to probation with the minimum confinement condition permitted unless the court finds that a greater confinement condition is necessary to serve the purposes of sentencing.

Proposed Amendment: Section 5B1.1 is amended by adding the following new subsection:

> “(c) A sentence of probation without a confinement condition shall be imposed if the applicable guideline range is in Zone A of the sentencing table unless the court finds, for reasons stated on the record, that a sentence of imprisonment is required to achieve the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2). A sentence of probation with the minimum confinement condition permitted shall be imposed if the applicable guideline range is in Zone B of the sentencing table unless the court finds, for reasons stated on the record, that a greater confinement condition is required to achieve the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2).”.

53. *Synopsis of Proposed Amendment:* This amendment simplifies the application of the related case rule in § 4A1.2 (Definitions and Instructions for Computing Criminal History) and reduces disparate treatment of similarly-situated defendants produced merely by the happenstance of where prior cases were prosecuted. The amendment requires counting of prior sentences whenever the offenses from which the sentences resulted were separated by intervening arrest. Prior sentences for offenses not separated by an intervening arrest are considered one sentence, with the length of the term of imprisonment determined, in the case of concurrent sentences, by the longest term of imprisonment or, in the case of consecutive sentences, by the aggregate term of imprisonment.

Proposed Amendment: Section 4A1.2(a)(2) is amended to read as follows:

> “(A) Count prior sentences separately if the offenses from which those sentences resulted are separated by an intervening arrest (i.e., the defendant is arrested for the first offense before defendant commits the second offense).
>
> (B) Count as one sentence, for purposes of § 4A1.1(a), (b), and (c), prior sentences that result from offenses not separated by an intervening arrest. Use the longest sentence of imprisonment if the sentences were concurrent, and the aggregate term of imprisonment if the sentences were consecutive.”.

54. *Synopsis of Proposed Amendment:* To avoid double counting, and to insure consistency with the provisions of § 5G1.3, the term “instant offense” in subsection (a)(1) of § 4A1.2 (Definitions and Instructions for Computing Criminal History) has to include “relevant conduct”. One circuit, however, has held that the inquiry is not whether the prior sentence is for conduct that is “relevant conduct,” but rather “whether the prior conduct constitutes a ‘severable, distinct offense’ from the offense of conviction,” adding unnecessary complexity to the guideline.

Proposed Amendment: Subsection (a)(1) of § 4A1.2 is amended by adding “and its relevant conduct” after “the instant offense”. Application Note 1 in the Commentary to § 4A1.2 captioned “Application Notes” is amended in the first sentence of the first paragraph, by inserting “and its relevant conduct” after “the instant offense” the second time that term appears; and in the third sentence of the first paragraph, by inserting “including its relevant conduct,” after “the instant offense” the first time that term appears, and by inserting “and its relevant conduct” after “the instant offense” the third time that term appears.

55. *Synopsis of Proposed Amendment:* This amendment revises § 4B1.1 (Career Offender) to require the court to impose upon a career offender a sentence that is at the top of the guideline range for Criminal History Category VI and the offense level otherwise determined.

Proposed Amendment: Section 4B1.1 is amended by deleting the last two sentences and inserting in lieu thereof the following:

> “A career offender's criminal history category shall be category VI. A career offender shall receive a sentence at the top of the applicable guideline range.”.

56. *Synopsis of Proposed Amendment:* Section 1B1.10 (Retroactivity of Amended Guideline Range) authorizes a court to reduce the sentence of a defendant serving a term of imprisonment when the guideline range applicable to the defendant has been reduced if the reduction was due to an amendment specified in subsection (d). This amendment adds to the list in subsection (d) the amendment to § 3E1.1 that took effect November 1, 1992. The amendment also revises subsection (a) of the policy statement to authorize the court to reduce a sentence if the reduction is due to an amendment not on the list in subsection (d), if the court finds that a reduction would be consistent with the purposes of sentencing.

Proposed Amendment: Section 1B1.10(d) is amended by inserting “459,” after “433,”. Section § 1B1.10(a) is amended in the second sentence by adding at the end thereof “unless the court determines that the maximum of the guideline range has been reduced by at least six months and that a reduction in sentence would be consistent with the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2)”.

Proposed Amendments and Issues for Comment Published at the Request of the Department of Justice

57. *Synopsis of Proposed Amendment:* This amendment clarifies the Commission's intent with respect to whether § 4A1.2 (Definitions and Instructions for Computing Criminal History) confers on defendants a right to attack prior convictions collaterally at sentencing, an issue on which the appellate courts have differed. Compare, e.g., United States v. Canales, 960 F.2d 1311, 1316 (5th Cir. 1992) (Section 4A1.2 commentary indicates Commission intended to grant sentencing courts discretion to entertain initial defendant challenges to prior convictions); United States v. Jacobetz, 955 F.2d 786, 805 (2d Cir. 1992)

(similar); United States v. Cornog, 945 F.2d 1504, 1511 (11th Cir. 1991) (similar) with United States v. Hewitt, 942 F.2d 1270, 1276 (8th Cir. 1991) (commentary indicates defendants may only challenge use of prior convictions at sentencing by showing such conviction previously ruled invalid). Consistent with Braxton v. United States, 111 S.Ct. 1854 (1991), this amendment addresses this inter-circuit conflict in interpreting the commentary by stating more clearly that the Commission does not intend to enlarge a defendant's right to challenge the use of prior convictions for sentence enhancement purposes beyond any right otherwise recognized in law.

Proposed Amendment: The Commentary to § 4A1.2 captioned "Application Notes" is amended in Note 6 by deleting "Nonetheless," and inserting in lieu thereof:

> "Whether a defendant at sentencing may collaterally attack a prior conviction or sentence is a procedural matter for court determination. The Commission does not intend this guideline or commentary to confer any right to attack collaterally at sentencing a prior conviction or sentence beyond any such right otherwise recognized in law (e.g., 21 U.S.C. 851 expressly provides that a defendant may collaterally attack certain prior convictions).
>
> Notwithstanding the above,".

The Commentary to § 4A1.2 captioned "Background" is amended by deleting the last paragraph as follows:

> "The Commission leaves for court determination the issue of whether a defendant may collaterally attack at sentencing a prior conviction.".

58. *Synopsis of Amendment:* This amendment to § 2S1.3 harmonizes the treatment of violations involving various financial reports required by law. Currently, the base offense level under § 2S1.3 for a failure to file a Currency Transaction Report (CTR) or an IRS Form 8300 is 5, absent structuring to evade reporting requirements, while the base offense level under § 2S1.4 for a failure to file a Currency and Monetary Instrument Report (CMIR) is 9. A CTR must be filed by a financial institution engaging in a cash transaction greater than $10,000; a Form 8300 must be filed by a trade or business receiving more than $10,000 in cash; and a CMIR must be filed by a person who transports more than $10,000 in cash into or out of the United States. In each instance, these reporting requirements act as a check on large cash transactions that may be rooted in criminal conduct and permit monitoring of suspicious financial activities. This amendment reflects a judgment that these three types of reports are similar in purpose and that comparable violations involving them should be treated similarly. (Related amendment proposal: 20).

Proposed Amendment: Section 2S1.3(a) is amended by inserting the following as new subsection (a)(2):

> "(2) 9, for a willful failure to file; or";

and by renumbering current subsection (a)(2) as subsection (a)(3).

Section 2S1.3(b) is amended by inserting the following as new subsection (b)(2):

> "(2) If the defendant knew or believed that the funds were intended to be used to promote criminal activity, increase by 4 levels. If the resulting offense level is less than level 13, increase to level 13.";

by renumbering the current subsection (b)(2) as subsection (b)(3); and by inserting "or (a)(2)" immediately following "(a)(1)" in renumbered subsection (b)(3).

The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by deleting the following:

> "26 U.S.C. 7203 (if a willful violation of 26 U.S.C. 6050I); 31 U.S.C. 5313, 5314, 5322, 5324.";

and inserting in lieu thereof:

> "26 U.S.C. 7203 and 7206 (if a willful violation of 26 U.S.C. 6050I or in connection with a return required under 26 U.S.C. 6050I); 31 U.S.C. 5313, 5314, 5316, 5322, 5324."

The Commentary to § 2S1.3 captioned "Background" is amended in the second paragraph by inserting the following:

> "A base offense level of 9 is provided for willful failure to file the required reports, and for the mere denial of reportable assets in response to routine questioning at a border crossing."

immediately following the first sentence.

Section 2S1.4, captioned "Failure to File Currency and Monetary Instrument Report" is deleted in its entirety.

The Commentary to § 2T1.3 captioned "Statutory Provision" is amended by deleting

> "26 U.S.C. 7206, except 7206(2).";

and inserting in lieu thereof

> "26 U.S.C. 7206(1), (3), (4), and (5) (except in connection with a return required under 26 U.S.C. § 6050I)."

The Commentary to § 2T1.4 captioned "Statutory Provision" is amended by inserting "except in connection with a return required under 26 U.S.C. 6050I)" immediately following "26 U.S.C. § 7206(2)."

59. *Synopsis of Amendment:* This amendment creates a new guideline applicable to violations of the Computer Fraud and Abuse Act of 1988 (18 U.S.C. 1030). Violations of this statute are currently subject to the fraud guidelines at § 2F1.1, which rely heavily on the dollar amount of loss caused to the victim. Computer offenses, however, commonly protect against harms that cannot be adequately quantified by examining dollar losses. Illegal access to consumer credit reports, for example, which may have little monetary value, nevertheless can represent a serious intrusion into privacy interests. Illegal intrusions in the computers which control telephone systems may disrupt normal telephone service and present hazards to emergency systems, neither of which are readily quantifiable. This amendment proposes a new Section 2F2.1, which provides sentencing guidelines particularly designed for this unique and rapidly developing area of the law.

Proposed Amendment: Part F is amended by inserting the following section, numbered § 2F2.1, and captioned "Computer Fraud and Abuse," immediately following Section 2F1.2:

> **"§ 2F2.1. Computer Fraud and Abuse**
>
> (a) Base Offense Level: 6
>
> (b) Specific Offense Characteristics
>
> (1) Reliability of data. If the defendant altered information, increase by 2 levels; if the defendant altered protected information, or public records filed or maintained under law or regulation, increase by 6 levels.
>
> (2) Confidentiality of data. If the defendant obtained protected information, increase by 2 levels; if the defendant disclosed protected information to any person, increase by 4 levels; if the defendant disclosed protected information to the public by means of a general distribution system, increase by 6 levels.
>
> Provided that the cumulative adjustments from (1) and (2), shall not exceed 8.
>
> (3) If the offense caused or was likely to cause
>
> (A) interference with the administration of justice (civil or criminal) or harm to any person's health or safety, or
>
> (B) interference with any facility (public or private) or communications network that serves the public health or safety, increase by 6 levels.
>
> (4) If the offense caused economic loss, increase the offense level according to the tables in § 2F1.1 (Fraud and Deceit). In using those tables, include the following:
>
> (A) Costs of system recovery, and
>
> (B) Consequential losses from trafficking in passwords.
>
> (5) If an offense was committed for the purpose of malicious destruction or damage, increase by 4 levels.
>
> (c) Cross References
>
> (1) If the offense is also covered by another offense guideline section, apply that offense guideline section if the resulting level is greater. Other guidelines that may cover the same conduct include, for example: for 18

U.S.C. 1030(a)(1), § 2M3.2 (Gathering National Defense Information); for 18 U.S.C. 1030(a)(3), § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft), § 2B1.2 (Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property), and § 2H3.1 (Interception of Communications or Eavesdropping); for 18 U.S.C. 1030(a)(4), § 2F1.1 (Fraud and Deceit), and § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft); for 18 U.S.C. § 1030(a)(5), § 2H2.1 (Obstructing an Election or Registration), § 2J1.2 (Obstruction of Justice), and § 2B3.2 (Extortion); and for 18 U.S.C. § 1030(a)(6), § 2F1.1 (Fraud and Deceit) and § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

Commentary

Statutory Provisions: 18 U.S.C. 1030(a)(1)–(a)(6)

Application Notes:

1. This guideline is necessary because computer offenses often harm intangible values, such as privacy rights or the unimpaired operation of networks, more than the kinds of property values which the general fraud table measures. See § 2F1.1, Note 10. If the defendant was previously convicted of similar misconduct that is not adequately reflected in the criminal history score, an upward departure may be warranted.

2. The harms expressed in paragraph (b)(1) pertain to the reliability and integrity of data; those in (b)(2) concern the confidentiality and privacy of data. Although some crimes will cause both harms, it is possible to cause either one alone. Clearly a defendant can obtain or distribute protected information without altering it. And by launching a virus, a defendant may alter or destroy data without ever obtaining it. For this reason, the harms are listed separately and are meant to be cumulative.

3. The terms "information," "records," and "data" are interchangeable.

4. The term "protected information" means private information, non-public government information, or proprietary commercial information.

5. The term "private information" means confidential information (including medical, financial, educational, employment, legal, and tax information) maintained under law, regulation, or other duty (whether held by public agencies or privately) regarding the history or status of any person, business, corporation, or other organization.

6. The term "non-public government information" means unclassified information which was maintained by any government agency, contractor or agent; which had not been released to the public; and which was related to military operations or readiness, foreign relations or intelligence, or law enforcement investigations or operations.

7. The term "proprietary commercial information" means non-public business information, including information which is sensitive, confidential, restricted, trade secret, or otherwise not meant for public distribution. If the proprietary information has an ascertainable value, apply paragraph (b) (4) to the economic loss rather than (b) (1) and (2), if the resulting offense level is greater.

8. Public records protected under paragraph (b) (1) must be filed or maintained under a law or regulation of the federal government, a state or territory, or any of their political subdivisions.

9. The term "altered" covers all changes to data, whether the defendant added, deleted, amended, or destroyed any or all of it.

10. A "general distribution system" includes electronic bulletin board and voice mail systems, newsletters and other publications, and any other form of group dissemination, by any means.

11. The term "malicious destruction or damage" includes injury to business and personal reputations.

12. Costs of system recovery: Include the costs accrued by the victim in identifying and tracking the defendant, ascertaining the damage, and restoring the system or data to its original condition. In computing these costs, include material and personnel costs, as well as losses incurred from interruptions of service. If several people obtained unauthorized access to any system during the same period, each defendant is responsible for the full amount of recovery or repair loss, minus any costs which are clearly attributable only to acts of other individuals.

13. Consequential losses from trafficking in passwords: A defendant who trafficked in passwords by using or maintaining a general distribution system is responsible for all economic losses that resulted from the use of the password after the date of his or her first general distribution, minus any specific amounts which are clearly attributable only to acts of other individuals. The term "passwords" includes any form of personalized access identification, such as user codes or names.

14. If the defendant's acts harmed public interests not adequately reflected in these guidelines, an upward departure may be warranted. Examples include interference with common carriers, utilities, and institutions (such as educational, governmental, or financial institutions), whenever the defendant's conduct has affected or was likely to affect public service or confidence".

60. *Synopsis of Amendment:* This amendment to § 3B1.2 is intended to adopt a rule, in light of the current scope of "relevant conduct" under § 1B1.3, against mitigating role adjustments for a defendant who has been held responsible under the definition of relevant conduct only for the quantity of controlled substances in which he or she actually trafficked. Such a rule recognizes that a role reduction is not appropriate when the measure of the defendant's involvement in the offense is not increased by the conduct of others. That is, he or she cannot be considered a minor or minimal participant as to his or her own conduct. (Related amendment proposals: 8, 39, and 48).

Proposed Amendment: Section 2B1.2 is amended by adding the following subsection:

"(c) No mitigating role adjustment under this section shall be applied to a defendant whose offense level is determined in part by reference to the drug quantity table in § 2D1.1 or the chemical quantity table in § 2D1.11 where the relevant conduct for the drug or chemical amounts consists only of the drugs or chemicals in the defendant's actual possession".

The Commentary to Section 3B1.2 captioned "Application Notes" is amended by adding the following Notes:

"(5) Section 3B1.2(c) applies when a defendant is convicted of an offense for which the drug quantity table in § 2D1.1 or the chemical quantity table in § 2D1.11 is applicable and the relevant conduct consists exclusively of the amount of drugs or chemicals in the defendant's actual possession. Because the actual possession of drugs or chemicals is essential to drug or chemical trafficking, no mitigating adjustment is available to the defendant when the relevant conduct of the drug or chemical amounts consists of only the drugs or chemicals in the defendant's actual possession. This provision prevents a mitigating adjustment for a courier or mule when the only drug or chemical amounts which can be proved are the amounts in the actual possession of the defendant, regardless of the number of other participants.

(6) Section 3B1.2(c) should not result in a mitigating adjustment for other participants simply because actual possession of drugs or chemicals is limited to one person. For example, if two persons agree to carry drugs or chemicals between cities; but, at the time of arrest, only one of the persons is in actual possession of drugs or chemicals, the defendant in constructive possession is not entitled to a mitigating adjustment. Similarly, when one person provides the money to purchase drugs or chemicals intended for later distribution, that person is not entitled to a mitigating role adjustment simply because the drugs or chemicals are discovered in the actual possession of another person. In these examples, each defendant is equally culpable and neither deserves a mitigating adjustment.

(7) When the relevant conduct for the drug or chemical amounts consists of drug or chemical amounts greater than the amount in the defendant's actual possession, a mitigating role is possible. In no event, however, may a defendant receive a mitigating adjustment which lowers the offense level below that applicable for the amount of drugs or chemicals in the defendant's actual possession ."

61. *Synopsis of Amendment:* This amendment to § 4B1.2 revises the definition of "crime of violence" for the purpose of the career offender guidelines to include all burglaries, and not just burglaries of a dwelling. In including all burglaries, this amendment conforms the definition of "crime of violence" for the purpose of

the career offender guidelines to the definition required by statute for the armed career criminal guideline. See 18 U.S.C. 924(e)(2)(B); Section 2B1.4, Application Note 1. This amendment also revises Application Note 2 to make it clear that "crime of violence" includes the possession of a firearm by a felon, conduct which is a criminal offense because Congress has determined that such conduct presents a risk of violence.

Proposed Amendment: Section 4B1.2 is amended in subsection (1)(ii) by deleting the words "of a dwelling" immediately following the word "burglary."

The Commentary to Section 4B1.2 is amended in Application Note 2 by deleting the words "does not include" in the first sentence of the second paragraph, and inserting in lieu thereof the word "includes."

62. *Issue for Comment:* The Commission requests comment on whether § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft), § 2B4.1 (Bribery in Procurement of Bank Loans or Other Commercial Bribery), and § 2F1.1 (Fraud and Deceit) should be amended to provide a 4 level enhancement in the base offense level for all offenses which affect a financial institution. An enhanced offense level would reflect the dramatic increases by Congress during the past several years in the maximum terms of imprisonment from 20 to 30 years for violations of ten major bank fraud and embezzlement offenses. The Commission also requests comment on whether the guidelines should provide an exception to such an enhancement for minor thefts by low level employees. (Related amendment proposal: 26).

63. *Issue for Comment:* The Commission requests comments on whether the caps on base offense levels for distribution of Schedule III, IV, and V controlled substances and Schedule I and II depressants should be removed or raised so that violations involving very large quantities of these drugs will result in greater sentences. The current provisions limit the base offense level to that applicable to 20 kilograms of these substances, regardless of how much greater the actual quantities may be.

Additionally, The Commission requests comment on whether the guideline ranges for trafficking in anabolic steroids, serious drugs of abuse which now receive relative low penalties, should be increased to make them more comparable to those for other Schedule III substances. In particular, the Commission also requests comment on whether the definition of a "unit" of anabolic steroid in the last paragraph of § 2D1.1 should be changed from "a 10 cc vial of injectable steroid or fifty tablets," to "a one cc vial of injectable steroid or five tablets." The Commission also requests comment on whether fewer than five tablets should be equivalent to a one cc vial of injectable steroid.

64. *Issue for Comment:* The Commission requests comment on whether in § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition)—

(1) the base offense level for offenses involving National Firearms Act firearms (e.g. machineguns, short-barreled firearms, silencers) should be increased from the current level 18 to level 22 (level 24 for destructive devices);

(2) the offense levels for offenses involving semiautomatic firearms should be increased from the current level 12 to level 22 (the level proposed for machineguns and most other National Firearms Act firearms).

(3) the base offense level for firearms violations by prohibited persons (e.g., felons or fugitives) should be increased by 4 levels;

(4) the minimum offense level for possession or use of a firearm in connection with another felony offense should be increased from level 18 to level 22;

(5) the cumulative offense level restriction (cap) of level 29 should be eliminated;

(6) the base offense level for distribution of a firearm to a prohibited person (e.g. a felon or fugitive) should be increased from the current level 12 to level 16: and

(7) the adjustment for offenses involving multiple firearms should increase more rapidly.

65. *Issue for Comment:* The Commission requests comment on whether the Commission should amend § 2F1.1 to include the risk of loss as a factor in determining the applicable guideline range for fraud and related offenses when the amount at risk is greater than the amount of the actual or intended loss. If so, should the risk of loss increase the applicable guideline range to the same extent as actual or intended loss? Should the risk of loss be limited to that which is reasonably foreseeable (e.g. the amount of the loan in a fraudulent loan application)? (Related amendment proposals 6, 7, and 57).

66. *Issue for Comment:* The Commission requests comment on whether, in light of the threat to the safety of our communities posed by gang-related crime, the guidelines should provide for a 4-level enhancement for felonies committed by a member of, on behalf of, or in association with a criminal gang. In this regard, the Commission also requests comment on whether a "criminal gang" should be defined as "a group, club, organization, or association of five or more persons whose members engage, or have engaged within the past five years, in a continuing series of crimes of violence and/or serious drug offenses."

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Part V

Department of Health and Human Services

Administration for Children and Families

Request for Applications Under the Office of Community Services' Fiscal Year 1993 Discretionary Grants Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–93–1]

Request for Applications Under the Office of Community Services' Fiscal Year 1993 Discretionary Grants Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Request for applications under the Office of Community Services' Discretionary Grants Program.

SUMMARY: The Administration for Children and Families, Office of Community Services [OCS] announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681(a)(2) of the Community Services Block Grant Act of 1981, as amended. This Program Announcement consists of seven parts: Part A covers information on legislative authorities and defines terms used in the Program Announcement;

Part B lists the three program priority areas under which grants will be made, describes the types of projects that will be considered for funding under each priority area, and defines who is eligible to apply;

Part C provides details on application prerequisites, funds available in each priority area, limitations on grant amounts, project periods, who should benefit from the program, and other application requirements;

Part D describes the application procedures, including the availability of forms, where and how to submit an application, the criteria used in screening and evaluating applications, and compliance with Federal requirements regarding the drug-free workplace and debarment requirements in submitting the application;

Part E describes the contents of the application package and receipt process;

Part F provides instructions for completing the SF–424 following standard Federal guidelines as well as OCS specific requirements, and describes how the project narrative should be ordered and presented; and Part G details post-award information and reporting requirements.

CLOSING DATE: The closing date for submission of applications is March 31, 1993.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Eleria M. Hunter, Director, Division of Community Discretionary Programs, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 401–9340.

Table of Contents

Part A—Preamble

1. Legislative authority.
2. Departmental goals.
3. Definition of terms.

Part B—Program Priority Areas

Part C—Application Prerequisites

1. Eligible applicants.
2. Availability of funds.
3. Project and budget periods.
4. Mobilization of resources.
5. Program beneficiaries.
6. Number of projects in application.
7. Multiple submittals.
8. Sub-contracting or delegating projects.
9. Previous performance.

Part D—Application Procedures

1. Availability of forms.
2. Application submission.
3. Intergovernmental review.
4. Application consideration.
5. Criteria for screening applicants.
6. Criteria for review and evaluation of all applications.

Part E—Contents of Application and Receipt Process

1. Contents of application.
2. Acknowledgement of receipt.

Part F—Instructions for Completing Application Package

1. SF–424 "Application for Federal Assistance".
2. SF–424A "Budget Information—Non-Construction Programs".
3. SF–424B "Assurance—Non-Construction".
4. Restrictions on lobbying activities.
5. Disclosure of lobbying activities.
6. Project narrative.

Part G—Post Award Information and Reporting Requirements

Part A—Preamble

1. Legislative Authority

Section 681(a)(2) of the Community Services Block Grant Act as amended authorizes the Secretary to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities.

2. Departmental Goals

The Secretary has established seven strategic goals guiding the Department of Health and Human Services' policies and programs over the next several years. One of those goals is particularly relevant to the OCS' Discretionary Grants Program, i.e., strengthening the American family. The Secretary's Program Directions on how programs should be managed in order to achieve this goal include improving access of youth living in low-income families to needed support services, including employment training and other transition to work services, and improving the integration, coordination and continuity of the various HHS funded services potentially available to families currently living in poverty.

3. Definition of Terms

For purposes of this Program Announcement the following definitions apply:

—Affiliate: a private non-profit entity which has legal and/or financial ties to a community development corporation, and which also meets the statutory requirement that it be governed by a board consisting of residents of the community and business and civic leaders.

—Community development corporation: a private, locally initiated, nonprofit entity, governed by a board consisting of residents of the community and business and civic leaders, which has a record of implementing economic development projects or whose Articles of Incorporation and/or By-Laws indicate that it has a focus in the area of economic development.

—Displaced worker: An individual who is in the labor market but has been unemployed for six months or longer.

—Distressed community: A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

—Eligible applicant: (See appropriate Priority Area under part B.)

—Indian tribe: A tribe, band, or other organized group of Indians recognized in the State in which it resides or which is considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose. For the purpose of Priority Area 1.0 (Urban and Rural Community Economic Development) an Indian tribe or Indian organization is ineligible unless the applicant organization is a private non-profit community economic development corporation.

—Migrant farmworker: An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

—Rural: An area that is not within the outer boundary of a metropolitan entity having a population of 25,000 or more and contiguous communities with a population density of 100 persons or more per square mile according to the latest decennial census. Such an area may be located entirely within one State or made up of contiguous interstate communities.

—Seasonal farmworker: Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

—Budget period: The interval of time into which a grant period of assistance is divided for budgetary and funding purposes.

—Project period: The total time for which a project is approved for support, including any approved extensions.

—Employment Education and Training Program: A program that provides education and/or training to welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals and that has demonstrated organizational experience in education and training for these populations (JOBS, JTPA, etc).

—Case management: For purposes of this announcement, case management includes but is not limited to: Assessment of the client's needs, development of a comprehensive service plan, and delivery of the most efficient and effective mixes of services.

Part B—Program Priority Areas

The program priority areas of the Office of Community Services' Discretionary Grants Program are as follows:

Priority Area 1.0 Urban and Rural Community Economic Development.
  1.1 Urban and Rural Community Economic Development (Operational).
  1.2 Urban and Rural Community Economic Development (HBCU Set-Aside).
  1.3 Urban and Rural Community Economic Development (Developmental Set-Aside).
  1.4 Urban and Rural Community Economic Development (YOU Program Set-Aside).
  1.5 Urban and Rural Community Economic Development (Disadvantaged Youth Set-Aside)
Priority Area 2.0 The Planning and Development of Rural Housing (including rental housing for low-income individuals) and Community Facilities.
  2.1 Rural Housing (including rental housing for low-income individuals).
  2.2 Rural Facilities
Priority Area 3.0 Assistance for Migrants and Seasonal Farmworkers.
  3.1 Assistance for Migrants and Seasonal Farmworkers (General).
  3.2 Assistance for Migrants and Seasonal Farmworkers (HBCU Set-Aside).

Priority Area 1.0 Urban and Rural Community Economic Development

Eligible applicants are private, locally initiated, nonprofit community development corporations (or private nonprofit affiliates of such corporations) governed by a board consisting of residents of the community and business and civic leaders which sponsor enterprises providing employment and business development opportunities for low-income residents of the community designed to increase business and employment opportunities in the community.

The purpose of this priority area is to encourage the creation of projects intended to provide employment and business development opportunities for low-income people through business, physical or commercial development, and generally to improve the quality of the economic and social environment of low-income residents, including displaced workers, at-risk teenagers, individuals residing in public housing, and individuals who are homeless. It is intended to provide resources to eligible applicants but also has the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas.

To this end, the program also seeks to attract additional private capital into distressed communities, including enterprise zones, and to build and/or expand the ability of local institutions to better serve the economic needs of local residents.

Applications under this Priority Area should include an Executive Summary of the proposal not to exceed five pages. This summary must address the program principles within this announcement and document that the proposed project will have national or regional significance.

Priority Area 1.1 Urban and Rural Community Economic Development (Operational)

Funds will be provided to a limited number of private non-profit community development corporations (or private non-profit affiliates of such corporations) for business development activities at the local level. Funding will be provided for specific projects and will require the submission of business plans or developmental proposals that meet the test of economic feasibility.

Projects must further the Departmental goals of strengthening American families and promoting their self-sufficiency. OCS is particularly interested in receiving applications that stress public-private partnerships that are directed toward the development of economic self-sufficiency through a focus on economic expansion.

Applicants located in State or Federally-designated enterprise zones, i.e., an area in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are urged to submit applications. Such projects may request funds for a business development project or a project that demonstrates innovative ways to involve the poverty community in the implementation of such efforts.

Applications must show that the proposed project: (1) Creates full-time permanent jobs. Seventy-five percent (75%) of those jobs created must be filled by low-income residents of the community and must also provide for career development opportunities. Project emphasis should be on employment of individuals who are unemployed or on public assistance, with particular emphasis on at-risk teenagers, individuals residing in public housing, and individuals who are homeless. While projected employment in future years may be included in the application, it is essential that the focus of employment projects concentrate on those jobs created during the duration of the OCS project period; and/or

(2) Creates a significant number of business development opportunities for low-income residents of the community or significantly aids such residents in maintaining economically viable businesses; and

(3) Provides for establishing the self-sufficiency of program participants.

In the evaluation process, favorable consideration will be given to applicants under this priority area who show the lowest cost-per-job created. Unless there are extenuating circumstances, OCS will not fund projects where the cost-per-job in OCS funds exceeds $15,000.

In addition, favorable consideration in the evaluation process will be given to applicants who demonstrate their intention to coordinate services with the local JOBS office and/or other employment education and training office that serves the proposed area. The JOBS or other employment education and training office should serve welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals (as defined by DHHS poverty guidelines). Applicants should submit a written agreement from the JOBS or other local employment education and training office that indicates what actions will be taken to integrate/coordinate services that relate directly to the project for which funds are being requested. The agreement should include the goals and objectives (including target groups) that the applicant and the employment education and training office expect to achieve through their collaboration. It should describe the cooperative relationship, including specific activities and/or actions each of these entities proposes to carry out in support of the project and the mechanism(s) to be used in coordinating those activities if the project is funded by OCS. Documentation that illustrates the organizational experience of the employment education and training program should also be included.

Any applicant which proposes to use the requested OCS funds to make an equity investment such as the purchase of stock, or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of the OCS funds, must include in its application a written agreement with the third party that commits the latter to the following:

1. A minimum of 75% of the jobs to be created under the grant will be for low-income individuals.

2. The grantee will have authority to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility.

3. The grantee will have a seat on the Board of Directors of the third party's firm if the grantee's investment equals 25% or more of the firm's assets. (Not applicable to loans made to third parties.)

4. Reports will be made on a quarterly basis to the grantee on the use of grant funds.

5. A procedure will be developed to assure that there are no duplicative counts of jobs created.

6. Detailed information will be provided on how the grant funds will be used by the third party by submitting a Source and Use of Funds Statement. In addition, the agreement will provide details on how the community development corporation will provide support and technical assistance to the third-party firm in areas of recruitment and retention of low-income individuals.

Any funds that are proposed to be used for training purposes must be limited to providing specific job-related training to those poverty level individuals who have been selected for employment in the grant supported project or who have been selected for training or participation in a project where potential new jobs have already been identified.

OCS encourages applications that create linkages with community organizations administering the JOBS program which will train and place residents dependent on public assistance into jobs created by the project funded under this priority area.

Projects which would result in the relocation of a business from one geographic area to another with the possible displacement of employees are discouraged.

OCS will not consider applications that propose to establish or expand revolving loan funds, nor proposals that are geared towards the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

OCS does not anticipate approving the funding of applications which propose to sub-grant all or most of the grant activities to an unrelated entity, with the exception of applications eligible for the special set-aside fund described below.

Applicants must be aware that projects funded under this priority area must be operational by the end of the project period, i.e., businesses must be in place, and low-income individuals actually employed in those businesses.

See Part F, 6, for special instructions on developing a work program for this priority area.

Priority Area 1.2 Urban and Rural Community Economic Development (HBCU Set-Aside)

For Fiscal Year 1993, a set-aside fund of $2.5 million will be included under this priority area for eligible applicants that submit projects that will be carried out in conjunction with Historically Black Colleges and Universities through contract or sub-grant. Such projects must conform to the purposes, requirements and prohibitions applicable to those submitted under Priority Area 1.1.

These projects should reflect a significant partnership role for the college or university, and the applicant in doing so, will be considered to have fulfilled the goals of the Public-Private Partnerships evaluation criterion and will be granted the maximum number of points in that category. Applications for these set-aside funds which are not funded due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants under Priority Area 1.1.

See part F, 6, for special instructions on developing a work program for this priority area.

Priority Area 1.3 Urban and Rural Community Economic Development (Developmental Set-Aside)

OCS intends in this priority area to provide funds to organizations who received grants from OCS in FY 92 under the Pre-Developmental grant program. These organizations will compete only among themselves for $2.5 million. Such projects must conform to the purposes, requirements, and prohibitions applicable to those submitted under Priority Area 1.1.

Priority Area 1.4 Urban and Rural Community Economic Development (YOU Program Set-Aside)

For Fiscal Year 1993, $1 million will be set-aside to specifically address the Secretary's Program Direction related to improving the integration, coordination and continuity of DHHS funded services potentially available to families currently living in poverty. In this instance, OCS is interested in the integration and coordination of services funded under this priority area with those funded by the Department of Labor under its Youth Opportunities Unlimited Program (YOU).

The YOU Program is a demonstration program aimed at high poverty urban neighborhoods and rural counties. The demonstration concentrates a large amount of resources into a relatively small geographic area (neighborhoods of 25,000 or less) with the goal of fundamentally changing the entire set of opportunities facing youth growing up in the areas.

This set-aside will be available to applicants eligible for funding under the OCS Urban and Rural Community Economic Development Program who submit applications for projects which will be implemented within the target areas of the YOU demonstration. These target areas are prescribed communities within the cities of Atlanta, Baltimore, Boston, Columbus, Denver, Fresno, Los Angeles, Philadelphia, Pittsburgh, and San Diego and two rural counties within the State of Mississippi. The exact boundaries of these areas are available from the respective YOU coordinators listed in Attachment K to this Program Announcement.

OCS is particularly interested in funding projects under this set-aside that both provide jobs with wages sufficient to support a family and that enhance the long-term economic and social environment of the target area.

Projects funded under this set-aside must conform to the purposes, requirements, and prohibitions applicable to those submitted under Priority Area 1.1. In addition, there must be a formal, cooperative relationship established between the applicant and the agency which received funding under DOL's YOU Program. The application must include a written agreement between the applicant and the YOU Program grantee which contains specific language confirming that the project will be carried out in the target area. The agreement must include the goals and objectives that the applicant and the YOU Program grantee expect to achieve through their collaboration. It also must describe the cooperative relationship, including specific activities and/or actions each of these entities proposes to carry out in support of the project and the mechanism(s) to be used in coordinating those activities if the project is funded by OCS. The extent to which services will be integrated and coordinated and the significance of those services will receive consideration in the review process.

Any applicant which proposes to use the requested OCS funds to make an equity investment such as the purchase of stock, or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of the OCS funds, must comply with requirements outlined under Priority 1.1.

OCS will make up to two grants under this set-aside with a maximum of $500,000 to be granted for each project. Only one grant will be made to address problems in a particular target area.

Applications for these set-aside funds which are not funded due to the limited amount of funds available also will be considered competitively with the larger pool of eligible applications under Priority Area 1.1.

Priority Area 1.5 Urban and Rural Community Economic Development (Disadvantaged Youth Set-Aside)

Eligible applicants are Community Development Corporations as defined in Part A, item 3 Definition of Terms, who are located in urban areas.

For Fiscal Year 1993, $2,250,000 will be set aside to specifically address the Secretary's concern with the plight of unemployed youth who are economically and socially disadvantaged and have little or no access to stable employment.

The goal of this set-aside is to create new employment opportunities—in depressed urban communities or urban communities designated as enterprise zones—for disadvantaged youth, particularly those belonging to minority populations, who are between the ages of 16 and 24, who are ineligible for training and placement under the JOBS program, and who have been unemployed for at least one year.

OCS recognizes, however, that simply placing these youth in a job does not necessarily put them on the path to self-sufficiency. Many of these individuals have little or no prior employment experience, and have educational deficits and poor life skills. These individuals need intensive services such as vocational and remedial education and job-readiness skills. They need training activities focusing on building self-esteem, changing negative attitudes, setting short-term goals, developing crisis management skills, learning to cope, identifying personal strengths, etc. They also need assistance in addressing barriers to obtaining and retaining employment such as drug and alcohol dependency problems, lack of child care and lack of transportation. Therefore, in addition to requiring that the projects proposed to be funded under this set-aside conform to the purposes, requirements, and prohibitions applicable to those submitted under Priority Area 1.1 and that disadvantaged youth as described above be hired in the newly-created jobs, OCS is providing sufficient funding for an intensive, individualized case-management approach as part of the project to aid the youth in removing those barriers to employment and in improving a variety of employment-related skills prior to employment as well as on an on-going basis for the duration of the grant.

Each disadvantaged youth hired to fill the newly-created jobs must be assigned to a case manager.

Applicants will be required to undertake an intensive outreach program, either directly or through the assistance of social services organizations which operate in the target community, e.g. the local Community Action Agency, to identify eligible disadvantaged youth to fill the jobs created.

If the jobs are to be created by a third party, the application must contain a written agreement from the appropriate third party official that all of the low-income persons to be hired will conform to the description of disadvantaged youth found in paragraph two of this set-aside and that the applicant will be responsible, either directly and/or through grant or contract with a third party, for the case management activities related to those hires as well as for identifying eligible disadvantaged youth for referral to the hiring official.

If funded, applicants also will be required to have linkages with appropriate social services agencies, e.g. State and local Departments of Human Resources, Community Action Agencies, JTPA contractors, community colleges, State vocational rehabilitation offices, local housing authorities, etc., to integrate existing community resources to address the needs of newly hired youths and to develop specialized/individualized services for them, as appropriate. The extent to which services will be integrated and coordinated and the significance of those services will receive consideration in the review process.

Any applicant which proposes to use the requested OCS funds to make an equity investment such as the purchase of stock, or a loan to a business concern, including a wholly-owned subsidiary, must comply with requirements outlined under Priority Area 1.1.

OCS will make up to three grants under this set-aside with a maximum of $750,000 to be granted for each project.

Priority Area 2.0 The Planning and Development of Rural Housing (Including Rental Housing for Low-Income Individuals) and Community Facilities

Priority Area 2.1 Rural Housing (Including Rental Housing for Low-Income Individuals)

Eligible applicants are States, public agencies or private non-profit organizations, including Historically Black Colleges and Universities.

The purpose of this priority area is to assist low-income residents in rural communities by providing grants to eligible applicants to: (a) Provide technical assistance to help low-income families and individuals more effectively utilize existing local, State and Federal housing assistance programs; and (b) develop innovative ways to meet the housing needs of low-income people, e.g., the rehabilitation or repair of existing substandard housing units for occupancy by low-income residents, the conversion of non-residential buildings to low-income residential use, and the purchase of homes by low-income people.

OCS encourages applications that will assist low-income homeowners to improve their housing through self-help rehabilitation. These applications should not include projects which can be funded through other existing Federal programs.

OCS also encourages the submission of proposals with the aim of assisting homeless families and those at risk of homelessness. Innovative ways to address housing needs of homeless families is of particular interest to OCS.

Projects should produce the following types of tangible improvements and benefits related to housing conditions for rural poor people: interior or exterior structural repairs including weatherization and alternative energy systems; jobs created for local unskilled residents while assuring quality work; technical assistance and professional services related to housing and community planning by community-based design and planning organizations. (Such projects should be conducted with maximum use of voluntary services of professional and community personnel, and development of innovative housing strategies to help low-income rural residents acquire housing.)

Applications calling for new construction or "gut" rehabilitation will only be considered if the application documents that there is insufficient existing housing stock that can be economically rehabilitated.

Funds will not be available for the repair or rehabilitation of low-income rental housing unless the structure is either occupied by a low-income owner or the properties to be repaired are (a) owned by a private non-profit organization and (b) covered by a written agreement which will ensure continued occupancy by low-income people for at least three years after completion of repairs and rehabilitation.

Funds will not be available under this program priority area for projects that establish or expand a revolving loan fund.

OCS is particularly interested in receiving applications from such entities as rural housing development corporations, cooperatives, and other public and private organizations with proven accomplishments in the area of rural housing.

See part F, 6, for special instructions on developing a work program for this priority area.

Priority Area 2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Funds will be provided under this priority area only for non-competitive continuation grants to the seven organizations which received grants under this priority area in FY 1992. Funds will be provided to the FY 1992 grantees based upon a report of satisfactory performance during the first nine months of the FY 1992 grant period.

Priority 3.0 Assistance for Migrants and Seasonal Farmworkers

Priority 3.1 Assistance for Migrants and Seasonal Farmworkers (General)

Eligible applicants are States, public agencies and private non-profit organizations including Historically Black Colleges and Universities.

The purpose of this priority area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrants and seasonal farmworkers in order to improve their quality of life and advance self-sufficiency.

OCS will entertain proposals that directly meet farmworker needs in such areas as: homelessness; crisis nutritional relief; the development of self-help systems of food production; emergency health and social services referral and assistance; home repair, rehabilitation, and ownership; direct assistance to low-income farmworkers, including at-risk teenagers, to improve their job skills for them to qualify for long term and permanent full-time employment in agriculture; and/or assistance to low-income farmworkers, including at-risk teenagers, who wish to leave agricultural employment and find jobs in other lines of work. Linkages with the local JOBS program are encouraged wherever appropriate.

Applicants must provide quantifiable objectives for each of the above activities which will be included in the project. OCS encourages applicants to develop linkages with other public and private sector service providers who also are working with migrant and seasonal farmworkers or with issues affecting this target group.

For projects that relate to job skills and training, OCS will not consider applications proposing to use funds exclusively for classroom instruction. Placement must be an integral activity of any training project.

Applications submitted under this priority area must not contain requests for OCS funding for projects that would duplicate Community Services Block Grant funding or activities for which funding is available from other Federal agencies such as the Department of Labor and the Department of Agriculture's Women, Infants and Children (WIC) program.

See part F, 6, for special instructions on developing a work program for this priority area.

Priority Area 3.2 Assistance for Migrants and Seasonal Farmworkers (HBCU Set-Aside)

For Fiscal Year 1993, a fund of $300,000 will be set aside for Historically Black Colleges and Universities to enable them to offer continuing education to migrants and seasonal farmworkers and to increase participant employment opportunities. Applicants must provide quantifiable objectives for each of the activities which will be included in the project. Applications which are not funded within this set-aside due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants under priority area 3.1.

See part F, 6, for special instructions on developing a work program for this priority area.

Part C—Application Prerequisites

1. Eligible Applicants

Priority areas included in this Program Announcement have differing eligibility requirements. Therefore, eligible applicants are identified in the individual priority area descriptions found in part B, above.

2. Availability of Funds

a. FY 1993 Funds

The Office of Community Services expects to award funds by September 30, 1993 for new grants. The maximum amount of funds available for each Priority Area is summarized below:

Priority area	Fiscal year 1993 funds
1.0 Urban and Rural Community Economic Development:	
1.1 Urban and Rural Community Economic Development (Operational)	$12,482,800
1.2 Urban and Rural Community Economic Development (HBCU Set-Aside)	2,500,000
1.3 Urban and Rural Community Economic Development (Developmental Set-Aside)	2,500,000
1.4 Urban and Rural Community Economic Development (YOU Program Set-Aside)	1,000,000
1.5 Urban and Rural Community Economic Development (Disadvantaged Youth Set-Aside)	2,250,000
2.0 Planning and Development of Rural Housing and Community Facilities Development	4,960,000
3.0 Assistance for Migrants and Seasonal Farmworkers.	
3.1 Assistance for Migrants and Seasonal Farmworkers (General)	2,647,232
3.2 Assistance for Migrants and Seasonal Farmworkers (HBCU Set-Aside)	300,000

b. Grant Amounts

No more than the below stated amounts will be granted for projects under the Priority Areas as indicated:

Priority area	Funding limit
1.1	$500,000
1.2	500,000
1.3	250,000
1.4	500,000
1.5	750,000
2.1	250,000
3.1	250,000
3.2	75,000

3. Project and Budget Periods

For Priority Areas 1.1, 1.2, 1.3, 1.4 and 1.5 applicants with projects involving construction may request project and budget periods up to 36 months. Applicants for other economic development projects under those priority areas and Priority Areas 2.1, 3.1 and 3.2 may request project and budget periods of up to 17 months. By fully funding the projects in FY 93 funding stability in future years will be insured.

For Priority Area 2.2 only: Based upon a report of satisfactory performance during the first nine months of the FY 1992 grant period, FY 1993 funds may be provided to the FY 1992 grantees on a non-competitive basis for the period beginning October 1, 1993.

4. Mobilization of Resources

OCS encourages and strongly supports mobilization of resources through public/private partnerships which can mobilize cash and/or third-party in-kind contributions. (See part D, Criteria V A and V B.)

5. Program Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits to low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS.

Attachment A to this Announcement is an excerpt from the guidelines currently in effect. Annual revisions of these guidelines are normally published in the Federal Register in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs.

Note, however, that low-income individuals granted lawful temporary resident status under Sections 245A or 210A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (Public Law 99–603) may not be eligible for direct or indirect assistance based on financial need under this program for a period of five years from the date such status was granted.

6. Number of Projects in Application

An application may contain only one project (except for Priority Area 1.4, where activities undertaken may be in a number of communities or impact areas) and this project must be identified as responding to one of the program priority areas stated in this Announcement. Applications which are not in compliance with this requirement will be ineligible for funding.

7. Multiple Submittals

There is no limit to the number of applications that can be submitted under a specific program priority area as long as each application contains a proposal for a different project. However, an applicant will receive only one grant in any Priority Area.

8. Sub-Contracting or Delegating Projects

OCS does not fund projects where the role of the applicant is *primarily* to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested.

Part D—Application Procedures

1. Availability of Forms

Attachments B, C and D contain all of the standard forms necessary for the application for awards under these OCS programs. These forms may be photocopied for the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled "FOR FURTHER INFORMATION" at the beginning of this announcement.

For purposes of this announcement, all applicants will use SF–424, SF–424A, and SF–424B, regardless of the priority area governing the project. Applications proposing construction projects will also present all required financial data using SF–424A.

Instructions for completing the SF–424, SF–424A, and SF–424B are found in Attachments B, C, and D.

Part F contains instructions for the project narrative. The project narrative will be submitted on plain bond paper along with the SF–424 and related forms.

Attachment J provides a checklist to aid applicants in preparing a complete application package for OCS.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.

2. Application Submission

Applications must be submitted to ACF by the closing date. Refer to "Closing Date" at the beginning of this document for the specific date.

Applications may be mailed to: Administration for Children and Families, Division of Discretionary Grants, 200 Independence Avenue, SW., room 341–F–1, Washington, DC 20201.

Hand-delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at the above listed address.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office. In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it is the correct date of mailing, before accepting a receipt.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

One signed original application and four copies are required. The first page of the SF–424 must contain in the lower right-hand corner, a designation indicating under which priority area funds are being requested (See part F, section 1, subsection 11).

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Alabama, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Oregon, Virginia, Pennsylvania, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these thirteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 200 Independence Avenue, S.W., Room 341–F–1, Washington, DC 20201.

A list of the Single Points of Contact for each State and Territory is included as appendix H of this announcement.

4. Application Consideration

Applications which meet the screening requirements in sections 5a and b below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and evaluation criteria published in this announcement.

Applications submitted under all priority areas will be reviewed by persons outside of the OCS unit which will be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applicants

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in Part F and Attachments B, C, and D of this Program Announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(4) The application must be submitted for consideration under one priority area only.

b. Pre-Rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff prior to the programmatic review to verify that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility.* Applicant meets the eligibility requirements for the priority area under which funds are being requested. Proof of non-profit status must be included in the Appendices of the Project Narrative where applicable. Applicants must also be aware that the applicant's legal name as required in SF–424 (Item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Number of projects.* The application contains only one project which responds to one of the priority areas in this announcement.

(3) *Grant amount.* The amount of funds requested does not exceed the limits indicated in part C, 2, b for the appropriate priority area.

(4) *Cooperative partnership agreement.* (Priority Area 1.4 only)

(a) The application contains a written agreement signed by the applicant and the YOU Program grantee in the target service area; and

(b) The agreement contains specific language confirming that the project will be carried out in the target area.

(5) *Written agreement if jobs are to be created by a third party.* (Priority Area 1.5 only); The application contains a written agreement from the appropriate third party official that all of the low-income persons to be hired will conform to the description of "disadvantaged youth" found in the set-aside and that the applicant will be responsible for the case management activities related to those hires.

(6) *Target areas and populations.* (Priority Area 1.5 only); The application proposes to create new employment opportunities in urban depressed areas or urban areas designated as urban enterprise zones for disadvantaged youth between the ages of 16 and 24.

(7) *Written agreement when applicant proposes to make equity investment, loan, or sub-grant.* (Priority Areas 1.1, 1.2, 1.3, 1.4 and 1.5); The application contains a written agreement signed by the applicant and the third party which

includes all of the elements required in part B.

An application may be disqualified from the competition and returned if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained under each priority area as described in part B.

(Note: The following review criteria reiterate collection of information requirements contained in part F of this announcement. These requirements are approved under OMB Control Number 0970–0062.)

6. Criteria for Review and Evaluation of All Applications

(a) Criterion I: Analysis of Need (Maximum: 5 Points)

The application documents that the project addresses a vital need in a distressed community and provides statistics and other data and information in support of its contention.

(b) Criterion II: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 15 Points)

(i) *Organizational Experience in Program Area (sub-rating: 0–5 points).*

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population.

Organizations which propose providing training and technical assistance have detailed competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

Applicable to Priority Areas 1.1, 1.2, 1.3, 1.4, and 1.5

The applicant has demonstrated: the ability to implement major activities in such areas as business development, commercial development, physical development, or financial services; the ability to mobilize dollars from sources such as the private sector (corporations, banks, etc.), foundations, the public sector, including State and local governments, or individuals; that it has a sound organizational structure and proven organizational capability; and an ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities, and other benefits to community residents.

(ii) *Staff Skills, Resources and Responsibilities (sub-rating 0–10 points).*

The application describes in brief résumé form the experience and skills of the project director who is not only well qualified, but his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

(c) Criterion III: Project Implementation (Maximum: 25 Points)

The Work Plan, or Business Plan where appropriate, is both sound and feasible. The project is responsive to the needs identified in the Analysis of Need. It sets forth realistic quarterly time targets by which the various work tasks will be completed. Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be reasonably attained despite such potential problems.

(d) Criterion IV A: Significant and Beneficial Impact (Maximum: 30 Points)

(Applicable to Priority Areas 1.1, 1.2, 1.3, 1.4 and 1.5)

(i) *Significant and Beneficial Impact (Sub-Rating: 0–15 Points)*

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the community. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income communities, distressed communities, and/or designated enterprise zones; except, for Priority Area 1.5 applications, which are targeted to depressed *urban* communities or designated *urban* enterprise zones.

(ii) *Cost-per-Job (sub-rating; 0–10 points).*

During the project period the proposed project will create new, permanent jobs or maintain permanent jobs for low-income residents at a cost-per-job below $15,000 in OCS funds.

[Note: The maximum number of points will be given to those applicants proposing cost-per-job estimates of $5,000 or less of OCS requested funds. Higher cost-per-job estimates will receive correspondingly fewer points.]

(iii) *Career Development Opportunities (sub-rating: 0–5 points).*

The application documents that the jobs to be created for low-income people have career development opportunities which will promote self-sufficiency.

(d) Criterion IV B: Significant and Beneficial Impact (Maximum: 30 points)

(Applicable to Priority Areas 2.1, 3.1 and 3.2)

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted and significantly enhance the self-sufficiency of program participants. Results are quantifiable in terms of program area expectations, e.g., number of units of housing rehabilitated, agricultural and non-agricultural job placements, etc. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income and/or distressed communities and/or designated enterprise zones.

(e) Criterion V A: Public-Private Partnerships (Maximum: 20 points) Applicable to all Priority Areas Except 1.4 and 1.5)

(1) *Mobilization of resources: (sub-rating: 15 points)* The application documents that the applicant will mobilize from public and/or private sources cash and/or in-kind contributions valued.

(2) *Integration/coordination of services: (sub-rating: 5 points)* The applicant demonstrates a commitment to coordination with the local JOBS office and/or other employment education and training program (such as JTPA) to ensure that welfare recipients, at-risk youth, displaced workers, public housing tenants, homeless and low-

income individuals will be trained and placed in the newly created jobs. The applicant provides written agreement from the local JOBS or other employment education and training office indicating what actions will be taken to integrate/coordinate services that relate directly to the project for which funds are being requested.

Specifically, the agreement should include: (1) The goals and objectives that the applicant and the JOBS or other employment education and training office expect to achieve through their collaboration; (2) the specific activities/actions that will be taken to integrate/coordinate services on an on-going basis; (3) the target population that this collaboration will serve; (4) the mechanism(s) to be used in integrating/coordinating activities; (5) how those activities will be significant in relation to the goals and objectives to be achieved through the collaboration; and (6) how those activities will be significant in relation to their impact on the success of the OCS-funded project.

The applicant should also provide documentation that illustrates the organizational experience of the employment education and training program (refer to Criterion II for guidelines).

(f) Criterion V B: Public-Private Partnerships (Maximum: 20 Points) (Applicable to Priority Area 1.4 Only.)

(1) *Mobilization of resources (sub-rating: 10 points).* The application documents that the applicant will mobilize from public and/or private sources cash and/or in-kind contributions valued at an amount equal to half of the OCS funds requested. Applicants documenting that the value of such contributions will be at least equal to half of the OCS funds requested will receive the maximum points (10) of this subcriterion.

(2) *Integration/coordination of services (sub-rating: 10 points).* The written agreement between the applicant and the organization which received FY 92 funding under the Department of Labor's Youth Opportunities Unlimited Program indicates that the action to be taken to integrate or coordinate services relate directly to the project for which funds are being requested. The agreement clearly describes the following: (1) The goals and objective that the applicant and the YOU program grantee expect to achieve through their collaboration; (2) a number of specific activities/actions that will be taken to integration or coordinate services on an on-going basis; (3) the mechanism(s) to be used integrating/coordinating activities; (4) how those activities will be significant in relation to the goals and objectives to be achieved through the collaboration; and (5) how those activities will be significant in relation to their impact on the success of the OCS-funded project.

(g) Criterion V C: Public-Private Partnerships (Maximum: 20 Points) (Applicable to Priority Area 1.5 Only)

(1) *Mobilization of resources (sub-rating: 10 points).* The application documents that the applicant will mobilize from public and/or private sources and/or in-kind contributions valued at an amount equal to half of the OCS funds requested. Applicants documenting that the value of such contributions will be at least equal to half of the OCS funds requested will receive the maximum points (10) of this subcriterion.

(2) *Integration/coordination of services (sub-rating 10 points).* The applicant and social services agency(s) will take actions to integrate or coordinate services relates directly to the project for which the funds are being requested. The applicant clearly describes the specific activities each of these entities proposes to carry out in support of the project and the mechanism(s) to be used in coordinating these activities.

(h) Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 Points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget break-down for each of the budget categories in the SF–424A. The applicant presents a reasonable administrative cost. The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application, whether involving construction or not, should include one original and four additional copies of the following:

a. A signed "Application for Federal Assistance" (SF–424);

b. "Budget Information—Non-Construction Programs" (SF–424A);

c. A signed "Assurances—Non-Construction Programs" (SF–424B);

d. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(i) Eligibility Confirmation

(ii) Analysis of Need

(iii) Organizational Experience and Staff Responsibilities

(iv) Work Program (including Executive Summary)

(v) Appendices, including By-Laws; Articles of Incorporation; proof of non-profit status where applicable; resumes; and Single Point of Contact comments, where applicable; for Priority Area 1.4 only, a written agreement signed by the applicant and an organization funded by the Department of Labor under the YOU program: and, for Priority Area 1.5 only, written agreements, where applicable, with officials of third parties which will be responsible for the creation of jobs.

The original must bear the signature of the authorizing representative of the applicant organization.

The total number of pages for the entire application package should not exceed 50 pages.

Applications should be two holed punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications, or applications enclosed in binders, is especially discouraged.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ X 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded, if included.

2. Acknowledgement of Receipt

All applicants will receive an acknowledgement postcard with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement postcard. This number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9230.

Part F—Instructions for Completing Application Package

(Approved by the Office of Management and Budget under Control Number 0970–0062 The standard forms attached to this announcement shall be used to apply for funds for all priority areas described in this announcement.)

It is suggested that you reproduce the SF–424 and SF–424A, and type your application on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "Not Applicable."

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

1. SF–424 "Application for Federal Assistance" Item

1. For the purposes of this announcement, all projects are considered "Applications"; there are no "Pre-Applications." Also for the purposes of this announcement, construction projects are those which involve major renovations or construction. All others are considered non-construction. Check the appropriate box under "Application."

5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (PIN/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status, such as IRS determination or appropriate sections of the Articles of Incorporation, or By-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New".

9. Enter DHHS–ACF/OCS.

10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.570. The title is "CSBG Discretionary Awards."

11. The following letter program priority area designations must be used:

UR—for Priority Area 1.1. Urban and Rural Community Economic Development (Operational)

HB—for Priority Area 1.2. Urban and Rural Community Economic Development (HBCU Set-Aside)

DM—for Priority Area 1.3. Urban and Rural Community Economic Development (Developmental Set-Aside)

UY—for Priority Area 1.4. Urban and Rural Community Economic Development (YOU Program Set-Aside)

DY—for Priority Area 1.5. Urban and Rural Community Economic Development (Disadvantaged Youth)

RH—for Priority Area 2.1. Rural Housing Repairs and Rehabilitation (including rental housing for low-income individuals)

RF—for Priority Area 2.2. Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

MS—for Priority Area 3.1. Assistance for Migrants and Seasonal Farmworkers (General)

HM—for Priority Area 3.2 Assistance for Migrants and Seasonal Farmworkers (Set-Aside)

2. SF–424A—"Budget Information—Non-Construction Programs"

See Instructions accompanying this form as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS discretionary funds only, and "Non-Federal" will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS discretionary funding should be included in "Non-Federal" entries.

The budget forms in SF–424A are only to be used to present grant administrative costs and major budget categories. Financial data that is generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Clearly identified continuation sheets in SF–424A format should be used as necessary.

Section A—Budget Summary

Lines 1–4, Col. (a): Line 1 Enter "CSBG Discretionary";

Col. (b): Line 1 Enter "93.570";

Col. (c) and (d): Applicants should leave columns (c) and (d) blank.

Column (e)—(g): For line 1, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the budget period. Line 5 Enter the figures from Line 1 for all columns completed as required, (c), (d), (e), (f), and (g).

Section B—Budget Categories

Allowability of costs are governed by applicable cost principles set forth in 45 CFR Parts 74 and 92.

Columns (1) and (5): In OCS applications, it is only necessary to complete Columns (1) and (5).

Column 1: Enter the total requirements for OCS Federal funds by the Object Class Categories of this section:

Personnel-Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits-Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel-Line 6c: Enter total costs of all travel by employees of the project. Travel costs for the Executive Director or Project Director to attend a two day national workshop in Washington, DC should be included. Do not enter costs for consultant's travel. Provide justification for requested travel costs.

Equipment-Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having an acquisition cost per unit of $500 or more for non-profit organizations and $5,000 or more for public organizations and having a useful life of one year. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Line 21 for additional requirements).

Supplies-Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual-Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of this form (SF-424A), completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of renovation, repair, or new construction. Provide narrative justification and breakdown of costs.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another Federal agency or is awaiting such approval. With the exception of local governments, applicants should enclose a copy of the current rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent (DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Totals—Line 6k: Enter the total amounts of Lines 6i and 6j. The total amount shown in Section B, Column (5), Line 6k, should be the same as the amount shown in Section A, Line 5, Column (e).

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Section C—Non-Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. "Non-Federal" resources mean other than OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act program, should be entered on these lines. Provide a brief listing of the non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the Public-Private Partnerships criterion.

Except in Unusual Situations, This Documentation Must Be in the Form of Letters of Commitment From the Organization(s)/Individuals From Which Funds Will Be Received.

Line 8: Column (a): Enter the project title.

Column (b): Enter the amount of contributions to be made by the applicant to the project.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Lines 9, 10, and 11 should be left blank.

Line 12:

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasting Cash Needs

Line 13: Enter the amount of Federal (OCS) cash needed for this grant by quarter. During the budget period for grants which are more than twelve (12) months, submit a separate sheet for each additional twelve (12) months or portion thereof.

Line 14: Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15: Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

To be completed by applicants applying under Priority Area 2.2 only.

Section F—Other Budget Information

Line 21: Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative.

D. Contractual: Major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22: Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23: Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B "Assurances-Non-Construction"

Fill out, sign and date form found at Attachment D.

4. Restrictions on Lobbying Activities

Certification for Contracts, Grants, Loans, and Cooperative Agreements: Fill out, sign and date form found at Attachment H.

5. Disclosure of Lobbying Activities, SF–LLL

Fill out, sign and date form found at Attachment H, if applicable.

6. Project Narrative

The project narrative must address the specific concerns mentioned under the relevant priority area description in part B. The narrative should provide information on how the application meets the evaluation criteria in part D, section 5c of this Program Announcement and should follow the format below:

a. Eligibility Confirmation

This section must explain how the applicant has complied with each of the basic requirements listed in Part D, 5b (1)–(5), i.e., (1) that the applicant meets the eligibility requirements for the priority area under which funds are being requested; (2) the application contains only one project which responds to one of the priority areas in the announcement; (3) the amount of funds requested does not exceed the limits indicated in Part C, Section 2, b for the appropriate priority area; (4)(a) (Priority Area 1.4) the application contains a written agreement signed by the applicant and the YOU Program grantee in the target service area; and (b) the agreement contains specific language confirming that the project will be carried out in the target area; (5) (Priority Areas 1.2, 1.3, and 1.5) the application contains a written agreement signed by the applicant and the third party which includes all of the elements required in Part B; under Priority Area 1.1 and 1.4 a written agreement between the applicant and a third-party is only required if the proposal is to use OCS funds to make an equity investment or a sub-grant.

An application may be disqualified from the competition and returned if it does not conform to one or more of the above requirements.

b. Analysis of Need

The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. It should also include documentation supportive of its needs assessment such as employment statistics, housing statistics, etc.

c. Organizational Experience and Staff Responsibilities

(i) Organizational Experience

Each applicant must document competence in the specific program priority area under which an application is submitted.

Documentation must be provided which addresses the relevance and effectiveness of projects previously undertaken in the specific priority area for which funds are being requested and especially their cost effectiveness, the relevance and effectiveness of any services provided, and the permanent benefits provided to the low-income population. Organizations which propose providing training and technical assistance must detail their competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization.

Applicable to Priority Areas 1.1, 1.2, 1.3, 1.4 and 1.5

Applicants in these priority areas must also document a firmly established and quantifiable performance record that shows the following:

- —The ability to implement major activities such as business development, commercial development, physical development, or financial services;
- —Successful working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;
- —A sound asset base and organizational structure in terms of (a) net worth, (b) management stability, and (c) organizational capability;
- —An ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities and other benefits to community residents, and impact on community-wide economic problems and needs;
- —Sound administrative and fiscal systems and controls, and the ability to establish and maintain partnerships with the private sector in such forms as financial support, volunteerism or executives on loan.

(ii) Staff Skills, Resources and Responsibilities

The application must fully describe (e.g. a resume or position description) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project.

The application must include statements regarding who will have the responsibilities of the chief executive officer, who will be responsible for grant coordination with OCS, and how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

d. Work Program

The application must contain a detailed and specific work program, or Business Plan where appropriate, that is both sound and feasible. (For those applicants submitting proposals under Priority Areas 1.1, 1.2, 1.3, 1.4 and 1.5 the Business Plan will be accepted in lieu of the work program.) The work program will be evaluated according to Criteria III, IV, and V set forth in Part D of this announcement: Project Implementation, Significant and Beneficial Impact, and Public-Private Partnerships.

Projects funded under this announcement must be designed to produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. The OCS grant funds, in combination with private and/or other public resources, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones. Projects must be designed to achieve the specific program priority area objectives defined in this Program Announcement.

It must set forth realistic quarterly time targets by which the various work tasks will be completed. It must identify critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained despite such potential problems.

If an applicant is proposing a project which will affect a property listed in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the

National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF–424B, Item 13 for additional guidance.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for funding consideration.

Applicable to Priority Areas 1.1, 1.2, 1.3, 1.4 and 1.5

Applications submitted under Priority Areas 1.1, 1.2, 1.3, 1.4 and 1.5 which propose to use the requested OCS funds to make an equity investment or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of the OCS funds, must include a written agreement between the community development corporation and the recipient of the grant funds which contains all of the elements listed in Part B under the appropriate Priority Area.

Applications submitted under Priority Areas 1.1, 1.2, 1.3, 1.4 and 1.5 must include a complete Business Plan where it is appropriate to the project/venture. An application that does not include a Business Plan where one is appropriate may be disqualified and returned to the applicant.

In some cases a Business Plan may not be required under the Priority Areas. All applicants under the Priority Areas, however, must nevertheless submit the information which is required in sections 7 through 10, as set forth below.

The Business Plan is one of the major components that will be evaluated by OCS to determine the feasibility of an economic development project. It must be well prepared and address all the major issues noted herein.

The following guidelines show what should be included in order to produce a complete and professional Business Plan which makes an orderly presentation of the facts necessary to be judged responsive to the program announcement.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

The Business Plan should include the following:

1. *The business and its industry.* This section should describe the nature and history of the business and provide some background on its industry.

a. *The Business:* as a legal entity; the general business category;

b. *Description and Discussion of Industry:* Current status and prospects for the industry;

2. *Products and Services:* This section deals with the following:

a. *Description:* Describe in detail the products or services to be sold;

b. *Proprietary Position:* Describe proprietary features if any of the product, e.g. patents, trade secrets;

c. *Potential:* Features of the product or service that may give it an advantage over the competition;

3. *Market Research and Evaluation:* This section should present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition;

a. *Customers:* Describe the actual and potential purchasers for the product or service by market segment.

b. *Market Size and Trends:* State the size of the current total market for the product or service offered;

c. *Competition:* An assessment of the strengths and weaknesses of competitive products and services;

d. *Estimated Market Share and Sales:* Describe the characteristics of the product or service that will make it competitive in the current market;

4. *Marketing Plan:* The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. *Design and Development Plans:* If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

6. *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. *Management Team:* The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills, and experience in doing what is proposed. This section must include a description of: the key management personnel and their primary duties; compensation and/or ownership; the organizational structure; Board of Directors; management assistance and training needs; and supporting professional services.

8. *Overall Schedule:* A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, and production and operations. Sufficient detail should be included to show the timing of the primary tasks required to accomplish each activity.

9. *Critical Risks and Assumptions:* The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture.

10. *Community Benefits:* The proposed project must contribute to economic, community and human development within the project's target area. A section that describes and discusses the potential economic and non-economic benefits to low-income members of the community must be included as well as a description of the strategy that will be used to identify and hire individuals being served by public assistance programs and how linkages with community agencies/organizations administering the JOBS program will be developed.

The following project benefits must be described:

Economic

—Number of permanent jobs that will be created for low-income people during the grant period;

—Number of jobs to be created for low-income people that will have career

development opportunities and a description of those jobs;
- Number of jobs that will be filled by individuals on public assistance;
- Ownership opportunities created for poverty-level project area residents;
- Specific steps to be taken to promote the self-sufficiency of program participants.

Other benefits which might be discussed are:

Human Development

- New technical skills development and associated career opportunities for community residents,
- Management development and training.

Community Development

- Development of community's physical assets;
- Provision of needed, but currently unsupplied, services or products to community,
- Improvement in the living environment.

11. *The Financial Plan:* The Financial Plan is basic to the development of a Business Plan Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the first three years of the business' operation·

a. Profit and Loss Forecasts—quarterly for each year;

b. Cash Flow Projections—quarterly for each year;

c. Pro forma balance sheets—quarterly for each year;

d. Initial sources of project funds;

e. Initial uses of project funds; and

f. Any future capital requirements and sources.

Applicable to Priority Area 2.1 Only

Each applicant must include a full discussion of the project including the following information:

- *Basic Housing Data for Targeted Area.* Information on the number of sub-standard housing units available to low-income people in the target area, deficiencies of the housing units to be repaired, i.e., lack of or inadequate plumbing, upgrading of electrical systems, etc., new construction inventory, property values, rents and mortgage rates. While specific census data may be included, this information must be project specific. Applicants must show that other Federal programs do not exist to address the rehabilitation needs of the targeted area.
- *Priorities.* Provide a rationale for the strategies and priorities for which OCS support is requested.
- *Participant Application Process.* A description of the participant application process including: (a) Verification of participant need and income eligibility, (b) proposed diagnostic repair forms and contract bid procedures (where applicable), and (c) completion verification and quality workmanship assurance procedures.
- *Types of Work to be Performed.* The quantitative and qualitative measures in the work plan should reflect the types of work to be performed, e.g. (a) technical assistance and training for each proposed organization/ community; and/or (b) repairs or rehabilitation or construction work, noting which types of work will be done in order to bring properties up to minimum housing standards, inspection procedures and construction schedules.

Applications proposing to repair or rehabilitate low-income rental housing (see Part B, Priority Area 2.1, regarding restrictions) must state the current rents for the units in question as well as what rents will be charged for the rehabilitated units. Applicants should also state the number of low-income residents who will be helped to purchase or acquire adequate housing.

- *Job Creation.* Data regarding the number of direct jobs that will be created in the proposed project, noting the number of low-income residents that will be trained and/or placed in these jobs.
- *Public-Private Partnership* A description of the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project and the amount of dollars which will be mobilized.

Applicable to Priority Areas 3.1 and 3.2

Each applicant must include a full discussion of the proposed project and how it will address one or more farmworker needs as described in Part B.

Among the benefits which merit discussion under this priority area are: The number of farmworkers who are expected to improve their agricultural skills and thus improve their agricultural employment situation; the number of farmworkers and/or their dependents who will be afforded an opportunity to continue their formal education; the number of farmworkers/ families who will receive crisis nutritional relief, emergency health and social services referrals and assistance, and assistance in the development of self-help systems of food production; the number of farmworkers who are expected to gain longer term or permanent private sector employment in areas outside agriculture; the number of farmworkers who will receive help in the areas of housing; the number of housing units to be repaired or rehabilitated; the degree and kind of such help; the amount of non-Discretionary program dollars expected to be mobilized, and the degree of private sector involvement that will be utilized in developing and carrying out projects funded under this Announcement.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total financial participation from the award recipient.

General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, are subject to the provisions of 45 CFR parts 74 and 92.

Grantees will be required to submit quarterly progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR Parts 74 and 92 and OMB Circular A–128 or A–133. If an applicant will not be requesting indirect costs, it should anticipate in its budget request the cost of having an audit performed at the end of the grant period.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or

$150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of nonappropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Discretionary Grants Program.

Dated: November 25, 1992

Eunice S. Thomas,

Director, Office of Community Services.

Attachment A—1992 Poverty Income Guidelines for All States (Except Alaska and Hawaii) and the District of Columbia

Size of family unit	Poverty guideline
1	$6,810
2	9,190
3	11,570
4	13,950
5	16,330
6	18,710
7	21,090
8	23,470

For family units with more than 8 members, add $2,380 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$8,500
2	11,480
3	14,460
4	17,440
5	20,420
6	23,400
7	26,380
8	29,360

For family units with more than 8 members, add $2,980 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$7,830
2	10,570
3	13,310
4	16,050
5	18,790
6	21,530
7	24,270
8	27,010

For family units with more than 8 members, add $2,740 for each additional member.

BILLING CODE 4130-01-M

Attachment B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED

Applicant Identifier

1. TYPE OF SUBMISSION:

Application
☐ Construction
☐ Non-Construction

Preapplication
☐ Construction
☐ Non-Construction

3. DATE RECEIVED BY STATE

State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY

Federal Identifier

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit

Address (*give city, county, state, and zip code*):

Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) ____________________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award
B. Decrease Award
C. Increase Duration
D. Decrease Duration
Other (*specify*):

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT:

Start Date
Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant
b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE ____________________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative
b. Title
c. Telephone number

d. Signature of Authorized Representative
e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4130-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2 Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction of real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Attachment C

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Standard Form 424A (4-88)

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. **TOTALS** (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. **Federal**	$	$	$	$	$
14. **NonFederal**					
15. **TOTAL** (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. **TOTALS** (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. **Direct Charges:**

22. **Indirect Charges:**

23. **Remarks**

SF 424A (4-88) Page 2
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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary, Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Attachment D

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section

102(a) of the Flood Disaster Protection Act of 1973 (P L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U S C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973; as amended, (P L. 93–205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16 Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4130–01–M

Attachment E

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

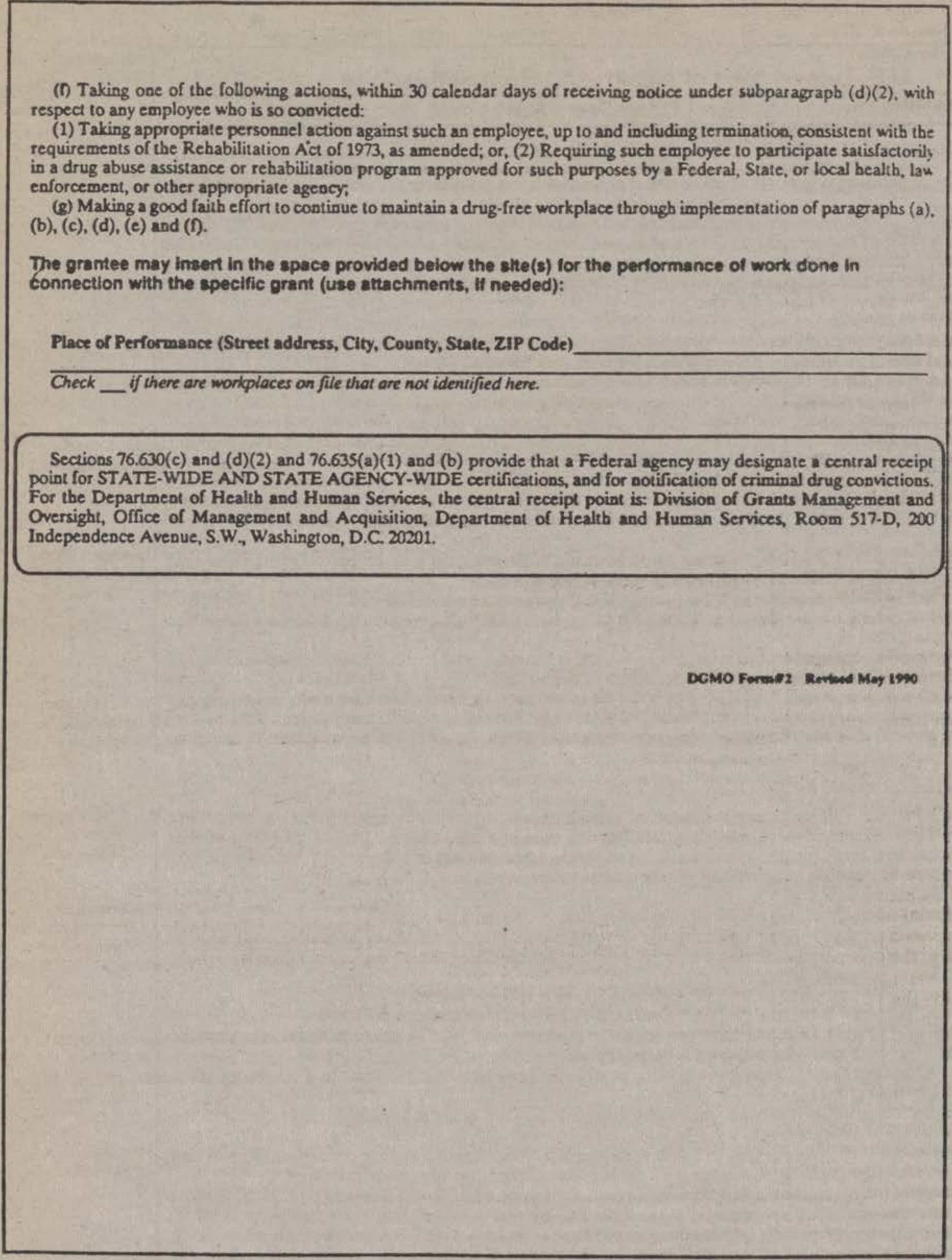
(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;



(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)______________________________

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4130-01-C

Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—State Single Points of Contact

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, room 416, District Building, 1350 Pennsylvania Avenue, NW , Washington, DC 20004, Telephone (202) 727–9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114

Georgia

Charles H Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Harold S Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–8172

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, Attn. Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, room

1803, Boston, Massachusetts 02202, Telephone (617) 727-7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Attn: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025.

New Mexico

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640, FAX (505) 827-3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P O Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN· Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538-1535

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington, 98504-4151, Telephone (206) 753-4978

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

Wisconsin

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266-1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, (608) 266-0267

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750

Attachment H—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any

Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more that $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4130-01-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OA
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a initial filing
b material change
For Material Change Only:
year ______ quarter ____
date of last report ________

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____ , *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*. ____________

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ ______________ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature ______________
value ______________

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d contingent fee
☐ e deferred
☐ f other; specify: ______________

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure

Signature: ______________________
Print Name: ______________________
Title: ______________________
Telephone No.: ____________ **Date:** ____________

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BILLING CODE 4130-01-C

Attachment I

The following DHHS regulations apply to all applicants/grantees under the Discretionary Grants Program:

Title 45 of the *Code of Federal Regulations*:

Part 16—Procedures of the Departmental Grant Appeals Board
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
  Sections: 74.62(a) Non-Federal Audits
  74.173 Hospitals
  74.174(b) Other Nonprofit Organizations
  74.304 Final Decisions in Disputes
  74.710 Real Property, Equipment and Supplies
  74.715 General Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension form Eligibility for Financial Assistance
  Subpart F—Drug Free Workplace Requirements
Part 80—Non-discrimination
  Under Programs Receiving Federal Assistance through the Department of Health and Human Services
  Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J

Checklist for Use in Submitting OCS Grant Applications (Optional)

The application should contain:

1. A completed, signed SF- 424, "Application for Federal Assistance". The letter code for the priority area (T&TA) should be in the lower right-hand corner of the page;
2. A completed "Budget Information—Non-Construction" (SF–424A);
3. A signed "Assurances—Non-Construction" (SF–424A);
4. A Project Narrative beginning with a Table of Contents that describes the project in the following order:
   (a) Need for Assistance.
   (b) Work Program.
   (c) Significant and Beneficial Impact.
   (d) Ability of Applicant to Perform.
   (e) Staffing and Resources.
5. Appendices including proof of non-profit status, Single Points of Contact comments (where applicable), resumes;
6. A signed copy of "Certification Regarding Anti-Lobbying Activities;
7. A completed "Disclosures of Lobbying Activities", if appropriate; and
8. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application.

The application should not exceed a total of 30 pages. It should include one original and four identical copies, printed on white 8½ by 11 inch paper, and be presented in a ring binder.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

Attachment K—U.S. Department of Labor—Youth Opportunities Unlimited FY 1992 Grantees

Atlanta, GA
  Contact person: Skip Darden, (404) 658–6681
Baltimore, MD
  Contact person: Ana Palmer, (301) 396–5586
Boston, MA
  Contact person: Constance Davis, (617) 635–3342
Columbus, OH
  Contact person: Kelly Boyner, (614) 228–3907
Denver, CO
  Contact person: Tom Miller, (303) 893–3382
Fresno, CA
  Contact person: Linda Wood, (209) 266–3742
Los Angeles, CA
  Contact person: Gloria Moore, (213) 237–1747
Mississippi:
  Contact person: Jean Denson, (601) 949–2123
Philadelphia, PA
  Contact person: Elaine Gillison, (215) 567–5627
Pittsburgh, PA
  Contact person: Barbara Misechok, (412) 255–2329
San Diego, CA
  Contact person: Pat Farero, (619) 525–1748

[FR Doc. 92–31476 Filed 12–30–92; 8:45 am]

BILLING CODE 4130–01–M

federal register

Thursday
December 31, 1992

Part VI

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Part 34
Office of Thrift Supervision
12 CFR Parts 545 and 563
Federal Reserve System
12 CFR Part 208
Federal Deposit Insurance Corporation
12 CFR Part 365

Real Estate Lending Standards; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. 92–27]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0765]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 365

RIN 3064–AB05

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545 and 563

[Docket No. 92–484]

RIN 1550–AA56

Real Estate Lending Standards

AGENCIES: Federal Deposit Insurance Corporation; Board of Governors of the Federal Reserve System; Office of the Comptroller of the Currency, Treasury; Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) have adopted a final uniform rule on real estate lending by insured depository institutions. The agencies are taking this action as required by section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991. The final rule prescribes real estate lending standards that require each insured depository institution to adopt and maintain comprehensive written real estate lending policies that are consistent with safe and sound banking practices. The policies must address certain lending considerations, including loan-to-value limits, loan administration procedures, portfolio diversification standards, and documentation, approval, and reporting requirements. The policies must also be appropriate to the size of the institution and the nature and scope of its operations, and must be reviewed and approved by the institution's board of directors at least annually. The policies adopted by the institution also should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies established by the agencies in conjunction with the final rule. The final rule is intended to establish real estate lending standards as required by Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

EFFECTIVE DATE: March 19, 1993.

FOR FURTHER INFORMATION CONTACT: *FDIC:* Robert F. Miailovich, Associate Director, Division of Supervision, (202) 898–6918; Robert Walsh, Examination Specialist, Division of Supervision, (202) 898–6911; Garfield Gimber, Examination Specialist, Division of Supervision, (202) 898–6913; Martha L. Coulter, Counsel, Legal Division, (202) 898–7348, Federal Deposit Insurance Corporation, Washington, DC 20429.

Board: Roger T. Cole, Deputy Associate Director (202) 452–2618, Rhoger H. Pugh, Assistant Director (202) 728–5883, Todd A. Glissman, Supervisory Financial Analyst (202) 452–3953, Virginia M. Gibbs, Supervisory Financial Analyst (202) 452–2521, Alfred D. Teuscher, Supervsory Financial Analyst (202) 452–3007, Division of Banking Supervision and Regulation; or Scott G. Alvarez, Associate General Counsel (202) 452–3583, or Brian E.J. Lam, Attorney (202) 452–2067, Legal Division. Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave., NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

OCC: Frank R. Carbone, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5170; William W. Templeton, Attorney, Bank Operations and Assets Division, (202) 874–4460; Mitchell Stengel, Financial Economist, Banking Research and Statistics, (202) 874–5240, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS: John C. Price, Jr., Deputy Assistant Director for Policy, (202) 906–5745; Robert Fishman, Program Manager for Credit Risk, (202) 906–5672; William J. Magrini, Project Manager for Credit Policy, (202) 906–5744, Supervision Policy; Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906–7133, and Valerie J. Lithotomos, Counsel (Banking and Finance), (202) 906–6439, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA),[1] enacted December 19, 1991, requires each federal banking agency to adopt uniform regulations prescribing standards for extensions of credit secured by liens on or interests in real estate or made for the purpose of financing the construction of a building or other improvements to real estate, regardless of whether a lien has been taken on the property. In establishing these standards, the agency are to consider: (a) The risk posed to the deposit insurance funds by such extensions of credit; (b) the need for safe and sound operation of insured depository institutions; and (c) the availability of credit. These regulations are to become effective within 15 months following the enactment of FDICIA.

The legislative history of section 304 indicates that Congress wanted to curtail abusive real estate lending practices in order to reduce risk to the deposit insurance funds and enhance the safety and soundness of insured depository institutions. Congress considered placing explicit real estate lending restrictions in the form of loan-to-value (LTV ratio limitations directly into the statute. Earlier versions of the legislation included specific LTV limits. Ultimately, however, Section 304 was enacted without LTV limits, or any other specific lending standards. Instead, Congress mandated that the federal banking agencies adopt uniform regulations establishing real estate lending standards without specifying what these standards should entail.

On July 16, 1992, the agencies' joint notice of proposed rulemaking (Joint Proposal) was published in the **Federal Register**, 57 FR 31594. The Joint Proposal requested public comment for a 45-day period, which ended on August 31, 1992.

On August 17, 1992, a supplement to the Joint Proposal was published by the OCC and the OTS in the **Federal Register**, 57 FR 36911. The supplementary analysis provided, for public comment, a description of the estimated costs and benefits that were likely to accrue as a result of implementing the Joint Proposal.

B. The Joint Proposal: Two Alternatives

The Joint Proposal took the form of two alternative regulations, both of which would establish an LTV framework for real estate lending. Under the first alternative (Alternative 1), each insured depository institution would be required to establish prudent lending standards, including internal LTV limits, for specific categories of real estate loans. The LTV limits would be set by the institutions within or below the following ranges of maximum ratios:

---

[1] Pub. L. No. 102–242, 105 Stat. 2236, 2354 (1991); 12 U.S.C. 1828(o); 12 U.S.C. 371(a).

Category of real estate loan	Range of maximum permissible LTV ratios (percent)
Raw land	50 to 65
Pre-construction development	55 to 70
Construction and land development	65 to 80
Improved Property[1]	65 to 80
Owner-occupied 1- to 4-family residential property	[2]80 to 95
Home equity	[2]80 to 95

[1] Improved property loans include extensions of credit secured by one of the following types of real property: (a) farmland committed to ongoing agricultural production; (b) non-owner-occupied 1- to 4-family residential property; (c) multi-family residential property; (d) completed commercial property; or (e) other income-producing property that has been completed and is available for occupancy and use.

[2] Any portion of a loan exceeding 85 percent LTV must be covered by private mortgage insurance.

The Joint Proposal indicated that the lower end of each range would be viewed by the agencies as a benchmark, but that each institution would be permitted to establish a higher ratio within the range based on appropriate factors. Institutions would be expected to specify criteria that would be used to qualify loans up to their internal LTV limits, taking into consideration individual lending factors such as the financial strength of the borrower, debt coverage ratios, credit enhancements, and "take-out" commitments. 57 FR 31596. Each institution would be expected to document fully its real estate lending standards in written policies approved by the institution's board of directors and subject to examiner review.

Under the second alternative (Alternative 2), the following uniform maximum LTV ratios for specific categories of real estate loans would be established by the agencies and imposed on all institutions:

Category of real estate loan	Maximum LTV ratio (percent)
Raw land	60
Pre-construction development	65
Construction and land development	[1]75
Improved property	[2]75
Owner-occupied 1- to 4-family residential property	[3]95
Home equity	[3]95

[1] Only if certain conditions are met, otherwise 65 percent.

[2] Only if the credit amortizes, otherwise 65 percent.

[3] Only with private mortgage insurance, otherwise 80 percent.

For both proposed alternatives, institutions would be expected to base real estate loans on proper loan documentation and a recent appraisal or evaluation of the real property underlying the loan, in conformance with the agencies' respective appraisal regulations and guidance. The LTV ratio would be defined by taking the total amount of credit to be extended and dividing that amount by the appraised value or evaluation of the property, as appropriate, at the time the credit is originated. The total amount of credit being extended would be combined with the amount of all senior liens when calculating the ratio.

In the Joint Proposal, the agencies requested comment on a number of issues, including whether the implementation of LTV limits would be an appropriate response to the Congressional directive to set real estate lending standards; whether the proposed LTV categories and ratios would be appropriate; whether the proposed nonconforming loan exemption would be adequate; whether additional loan categories or exceptions for specific lending arrangements were needed; whether the proposed exclusions from the LTV limits would be adequate; whether the proposed lending limits would provide sufficient flexibility to meet credit demands and not restrict the lending programs established by institutions to fulfill their obligations under the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.*; and whether institutions that qualify as "well capitalized" for purposes of Prompt Corrective Action under Section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o, should be given additional flexibility under the proposed standards.

C. Summary of Comments Received

1. Comments Received, by Agency

a. Federal Deposit Insurance Corporation

The FDIC received over 1,360 comment letters in response to the request for comments on the Joint Proposal. Of that number, approximately 342 were received from the financial services industry and related trade associations, as follows: 284 from depository institutions, 12 from depository institution holding companies, and 46 from depository institution trade associations. Approximately 852 of the total number of comment letters were received from the real estate industry and related trade associations, as follows: 421 from real estate brokers and agents, 27 from real estate brokers' trade associations, 145 from residential home builders, 37 from commercial construction firms, 136 from builders and developers, and 86 from home building trade associations. The remaining comment letters were received from approximately 37 professional and trade associations, including community development and affordable housing associations; 9 state regulatory agencies; 8 non-depository institution lenders including mortgage companies; 8 attorneys and law firms; 13 individuals; and 93 asset management, insurance, manufacturing and other firms.

b. Board of Governors of the Federal Reserve System

The Board received approximately 1,300 comments in response to its request for comments on the Joint Proposal. Non-duplicative comments were submitted by approximately 239 banks and bank holding companies, 312 home builders, 112 commercial builders and developers (and building suppliers), 238 real estate brokers and brokers' associations, 5 thrifts, 15 mortgage and finance companies, 24 banking associations, 10 Federal Reserve Banks, 4 state banking regulators, 53 attorneys and law firms, 8 community organizations, 3 title insurance companies, 5 mortgage insurance companies and associations, 20 real estate appraisers, and 39 building associations.

c. Office of the Comptroller of the Currency

The OCC received 1,250 comment letters in response to its request for comments on the Joint Proposal. Of the total received, 245 letters, or approximately 20 percent, were from the financial services industry, consisting of: 139 from national banks and bank holding companies with national bank subsidiaries; 75 from state banks, savings banks, holding companies with state bank subsidiaries, and savings and loan associations; 20 from industry trade associations; and 11 from other industry-related participants, professionals, firms, and governing organizations. The OCC received 960 letters, or about 77 percent of the total, from the real estate industry, consisting of: 370 from real estate and property management firms, associations, brokers, agents, and local real estate boards, 508 from residential home builders and their trade associations; 53 from individuals and firms involved in commercial construction and development; and 29 from other industry-related professionals, councils, and service providers. The remaining letters were from other interested organizations and individuals including: 8 from mortgage insurance underwriters and agents, 6 from mortgage corporations, 8 from appraisers and their trade association, 14 from local affordable housing corporations and associations, and 9 from law firms and bar associations.

d. Office of Thrift Supervision

The OTS received approximately 1,100 comments in response to the Joint Proposal. Approximately 461 comments were received from builders and developers, 404 of whom are primarily involved in residential construction and development, and 57 of whom are primarily involved in commercial construction and development. The remaining comments were submitted by 307 realtors; 147 trade associations representing various industries, including 107 home builders associations; 116 financial institutions, including 38 federal savings banks and 41 savings associations; 15 individuals; 8 federal and state governmental or quasi-governmental agencies; 7 community development associations; 7 building suppliers; 6 public interest/community groups; 5 appraisers; 5 consulting firms; 5 mortgage insurance companies; 4 law firms; 3 mortgage bankers; 2 title insurance companies; 1 Member of Congress; and 1 unidentified party.

2. Joint Agency Summary

Almost all commenters expressed concern with at least some aspect of the Joint Proposal. While many of the commenters acknowledged the significant real estate lending abuses of the 1980's, and the substantial losses to lenders that have resulted, a majority did not believe that a congressionally mandated regulation providing real estate lending standards offered a solution to the problem.

Numerous commenters characterized the Joint Proposal as unnecessary in the current real estate lending environment and urged that the agencies adopt flexible guidelines, rather than regulations. Comments received from lenders further highlighted their concern over the additional regulatory burden occasioned by the proposal. Numerous lenders asserted that the Joint Proposal would impose significant new monitoring and management costs without ensuring corresponding increases in the safety or soundness of their lending operations.

Commenters also stated that the proposed LTV standards could impede future economic growth, particularly if proposed benchmark LTV limits (as included in Alternative 1) were treated as maximum allowable LTV ratios by lenders and examiners. In particular, commenters expressed concern that the 65 percent LTV benchmark for construction lending could be perceived by lenders as an implied maximum. A few commenters, on the other hand, encouraged the agencies to take a strong stand, even endorsing additional regulatory requirements, in order to prevent a recurrence of abusive real estate practices and resulting losses in the future.

Many commenters, especially those from the home building industry, requested that loans secured by residential property be excluded from the Joint Proposal. Commenters also expressed a desire that the Joint Proposal be narrowed to focus on what are considered "true" real estate loans and particularly those types on which lenders have suffered substantial losses. The need to exclude ordinary business loans and lines of credit in which real estate is taken as part of the collateral was highlighted by lenders.

Concerning the implementation of a loan-to-value framework, many commenters expressed the view that the Joint Proposal placed too much reliance on LTV ratios as an indicator of credit quality. The commenters generally acknowledged that LTV ratios are typically employed by lenders to determine the extent to which they are willing to lend on particular real estate parcels or projects. Commenters also acknowledged that LTV ratios are generally well-understood in the market and readily calculated, although some concern was expressed over the quality of appraised values. A majority of commenters stressed that the LTV ratio is only one of several credit factors used when determining the overall credit worthiness of a real estate project and is often not the most important. A number of commenters recommended the use of debt service coverage ratios when analyzing credits to emphasize reliance on the primary source of repayment rather than collateral value when analyzing credits. Other commenters thought it inappropriate to adopt standards using a debt service coverage ratio because this ratio is not typically used in all types of real estate lending and acceptable debt coverage ratios vary significantly from one real estate project to another.

Concerning the application to LTV limits to individual real estate lending categories, nearly all commenters from the home building industry and many other commenters requested that residential construction be separated from commercial construction and assigned a higher maximum LTV ratio. A number of commenters also requested higher LTV limits for specific types of real estate lending. Some commenters also sought clarification on applying LTV limits to combination loans, pooling arrangements, and cross-collateralized loans.

Commenters were divided on their preference between Alternatives 1 and 2 for implementing an LTV framework. Generally, they preferred the higher LTV limits and flexibility associated with Alternative 1 but many disliked the concept of a range of maximum LTV ratios. A substantial number of commenters preferred the simplicity and implied lower burden of recordkeeping associated with Alternative 2.

Commenters strongly favored the concept of allowing lenders to make a limited amount of prudently underwritten loans that exceed LTV limits. However, a number of commenters felt that the proposed "basket" for such loans (15 percent of total capital) was too small, with some suggesting that only that portion of a loan exceeding the supervisory LTV limits should be included in the basket. A few commenters suggested that the size of the basket should be based upon something other than total capital.

Commenters also strongly agreed with excluding certain transactions from the LTV framework, as provided in the Joint Proposal. Moreover, commenters asked that the rule clearly exclude loans with a partial government guarantee (or insurance) from LTV limits and allow some new funds for renewals, refinancings, and restructurings of loans, particularly when needed to preserve collateral value.

Finally, the comment letters raised numerous questions about the application of the proposed rules in particular circumstances and made many suggestions for amendments.

D. The Final Rule

As explained above, a significant number of commenters expressed concern that rigid application of a regulation implementing LTV ratios would constrict credit, impose additional lending costs, reduce lending flexibility, impede economic growth, and cause other undesirable consequences. Many commenters urged the adoption of guidelines establishing general real estate lending standards in lieu of regulatory standards focused substantially on LTV limits as a means of implementing section 304 of FDICIA without producing such adverse consequences.

After reviewing the numerous comments received in response to the Joint Proposal, and considering the risk posed to the federal deposit insurance funds, the need for safe and sound operation of insured depository institutions, and the availability of credit, the agencies have decided against adopting specific LTV ratios or ranges in the final regulation. Instead, the agencies have adopted a final rule that prescribes a number of standards with regard to real estate lending.

The final rule requires institutions to establish and maintain written internal real estate lending policies. Each institution's lending policies must be consistent with safe and sound banking practices and appropriate to the size of the institution and the nature and scope of its operations. The policies must establish loan portfolio diversification standards; establish prudent underwriting standards, including LTV limits, that are clear and measurable; establish loan administration procedures for the institution's real estate portfolio; and establish documentation, approval, and reporting requirements to monitor compliance with the institution's real estate lending policies.

The institution's written real estate lending policies must be reviewed and approved by the institution's board of directors at least annually. Further, each institution is expected to monitor conditions in its real estate market to ensure that its lending policies continue to be appropriate for current market conditions. Finally, the rule provides that the lending policies established by the institution should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies adopted by the agencies in conjunction with the final rule.

E. The Interagency Guidelines for Real Estate Lending Policies

In order to supplement and clarify the standards stated in the final rule, the agencies have adopted Interagency Guidelines for Real Estate Lending Policies (Guidelines). The Guidelines describe the criteria and specific factors that the agencies expect insured institutions to consider in establishing their real estate lending policies.

1. Summary of the Guidelines

In general, the Guidelines identify the loan portfolio management and underwriting considerations that the agencies believe should be addressed in a sound real estate lending policy. The Guidelines also address the need to establish loan administration procedures for real estate loans, and the need for an appropriate review and approval process for loan proposals that would be exceptions to the institution's general lending policies. In addition to identifying the types of underwriting standards and requirements that should be included in a sound real estate lending policy, the Guidelines provide specific guidance on loan-to-value limits for various categories of real estate loans.

2. Issues Raised by Commenters and Addressed by Guidelines

Many commenters expressed the view that the approach taken in the Joint Proposal placed too much emphasis on LTV ratios. Numerous comments urged the agencies to include a measure of flexibility to permit institutions to lend beyond stated LTV limits when other underwriting factors indicated that an extension of credit could be made on a safe and sound basis. The agencies have developed the final rule, together with the Guidelines, in response to these comments. The agencies recognize that creditworthy loans may be underwritten at LTV levels that exceed those stated in the Joint Proposal. The agencies also recognize that simply satisfying an LTV ratio requirement does not necessarily ensure a prudent and collectable loan. The agencies have concluded that a rule that emphasizes only one element of the underwriting process may not ensure sound real estate lending or contribute to the safety and soundness of the financial system. The approach adopted in the final rule and the Guidelines is intended to provide insured depository institutions and borrowers additional flexibility while promoting prudent real estate lending.

Many commenters objected to the complexity and recordkeeping burden associated with Alternative 1 as proposed by the agencies; others believed that the ratios stated in Alternative 2 were too low and would constrict the availability of credit. In response, the agencies have incorporated a substantially revised LTV framework into the Guidelines. The LTV framework has been adopted in guideline form, rather than in a regulation, in order to add flexibility. Under the Guidelines, institutions may lend in excess of the supervisory LTV limits where credit is justifiable under the specific circumstances. Nevertheless, the agencies believe that LTV limits are an important element of prudent underwriting criteria and that lenders should carefully set and follow such limits.

In specifying LTV ratios in the Guidelines, the agencies have made a number of other modifications to take account of suggestions or objections stated by commenters. Many commenters, especially those from the home building industry, requested that loans secured by residential property be excluded from the Joint Proposal, or that a higher LTV limit be applied to loans secured by residential property as compared to loans secured by commercial property. In response to these comments, and based on the lower risk generally associated with 1- to 4-family residential lending, the LTV standards incorporated into the Guidelines differentiate between construction loans for 1- to 4-family residential property and other property. In addition, the Guidelines do not specify an LTV limit for permanent mortgages on owner-occupied 1- to 4-family residential property and for home equity loans, as a general matter. The Guidelines do specify, however, that a permanent residential mortgage or home equity loan originated with a loan-to-value that equals or exceeds 90 percent should have appropriate credit enhancement in the form of mortgage insurance or readily marketable collateral.[2]

Many commenters raised objections to the scope of the Joint Proposal. Generally, as indicated above, a number of commenters urged that the rule focus only on "true" real estate loans, and exclude business loans and lines of credit in which real estate is taken as part of the collateral. The agencies agree that an institution may appropriately craft its lending policies to address extensions of credit secured by an interest in real estate but not principally underwritten in reliance upon the real estate collateral. The Guidelines permit such an approach.

Although most commenters generally favored the concept of allowing lenders to make a limited amount of prudently underwritten loans in excess of the LTV limits, many commenters expressed concern that the size of the basket proposed by the agencies for such loans was not meaningful, and that the task of managing the contents of the basket would be burdensome. In addition to redesignating such loans as "loans in excess of the supervisory LTV limits", loans as "loans in excess of the supervisory LTV limits", the Guidelines address this concern in two ways. First, the size of the basket has been increased to 100 percent of an institution's total capital[3], with a 30 percent sub-limit for extensions of credit secured by property other than 1- to 4-family residential property. Second, the nature of the basket has been altered. As specified in the Guidelines, the aggregate level of these loans will serve as an indicator of an institution's compliance with its internal policies. A high level of such loans may indicate the need for an institution to re-evaluate the effectiveness of its internal lending policies or signal problems with its underwriting practices.

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[2] This requirement is a change from the current OTS regulation on private mortgage insurance (PMI) requirements. The current OTS rule requires a home loan with an LTV ratio in excess of 90 percent to have PMI coverage for the amount of the loan in excess of the 80 percent LTV ratio. The OTS is revising its current regulatory requirement to comport with the Guidelines. OTS is not, however, revising its current risk-based capital home loans, to be eligible for the favorable 50 percent risk-weight category, to be no greater than an 80 percent LTV ratio (or have PMI coverage for the amount of the loan in excess of 80 percent). Thus, thrift institutions will have the option, for high-LTV-ratio home loans, of either obtaining PMI coverage for the amount of home loans in excess of 80 percent and holding 4 percent capital, or of obtaining less (or no) PMI coverage and holding 8 percent capital. OTS believes that this differential capital treatment is appropriate, given the difference in risk of loss of such loans. OTS plans to work with the other agencies on the adoption of a uniform capital treatment of home loans.

F. Other Considerations

1. Subsidiaries of Thrifts and State-Chartered Banks

In the Joint Proposal, the FDIC and the Board indicated that they were considering the application of the proposed standards to lending subsidiaries of state banks. The OCC generally applies provisions of Federal banking laws and parent national bank to its operating subsidiaries and its bank service corporations. 12 CFR 5.34(d)(2) and 5.35(e)(3)(i) (1992). As of December 19, 1992, Section 24(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(d)) generally prohibits subsidiaries of insured state banks from engaging as principal in any type of activity that is not permissible for subsidiaries of national banks, unless the FDIC has made certain determinations, including a determination that the activity does not pose a significant risk to the appropriate deposit insurance fund.

Some commenters sought clarification on whether insured state bank subsidiaries would be subject to limitations on real estate lending as set forth in the Joint Proposal. Although the final rule does not expressly state that it applies to subsidiaries of insured state banks, it may apply to such subsidiaries by operation of section 24(d) of the Federal Deposit Insurance Act.[4] The FDIC intends to consider in the context of an upcoming rulemaking concerning section 24(d) the issue of whether insured state bank subsidiaries engaging in real estate lending are subject to the requirements of the final real estate lending rule. The Board intends to apply the final rule to subsidiaries of state member banks engaged in real estate lending activities.

For thrift institutions, the OTS stated in the Joint Proposal that it was the OTS's intent to subject all subsidiaries and service corporations to the proposed rule. Little public comment was received on this issue. The OTS has revised the final rule to cover only subsidiaries of thrifts that are not subject to the "deduction from regulatory capital" requirement under 12 CFR part 567 and over which the thrift exercises control. Subsidiaries subject to the "deduction from regulatory capital" requirement are, in general, those that engage in activities are not permissible for national banks. As a thrift institution's investments in and loans to such subsidiaries are deducted from the thrift's capital for capital adequacy purposes, the OTS believes that the institution and the deposit insurance fund are insulated from the risk of investments in such subsidiaries. As such, the final rule prescribing real estate lending standards does not apply to them.

Other thrift subsidiaries—those that are not subject to the "deduction from regulatory capital" requirement—are subject to the final rule only if the thrift exercises control over the subsidiary. This includes operating subsidiaries that are defined as entities that are more than 50 percent owned by a thrift institution and which engage only in activities permissible for a Federal savings association. The OTS has determined that it is inappropriate to subject entities that thrifts do not control to the regulation.

2. Bank Holding Companies and Their Nonbank Subsidiaries

The Board sought comment on whether, to what extent, and the manner in which the proposed real estate lending standards should be imposed on bank holding companies and their nonbank subsidiaries. In seeking such comment, the Board indicated that it was not clear by virtue of the text of section 304 of FDICIA whether such standards should be applicable to bank holding companies and their nonbank subsidiaries.

Several commenters addressed this question. Some commenters recommended that the proposed real estate standards be applied to bank holding companies and their nonbank subsidiaries because, in the commenters' view, all lenders should be held to the same prudent lending standards. Also, several commenters expressed concern that banking organizations may choose to underwrite loans with LTV ratios in excess of supervisory limits in their nonbank subsidiaries or move such loans from insured depository institutions to nonbank affiliates to avoid imposition of the rule.

In contrast, a larger number of commenters argued that the proposed real estate lending standards should not be imposed on bank holding companies and their nonbank subsidiaries because, in their opinion, the federal deposit insurance funds will not be at risk with respect to real estate loans made by such entities, and finance or mortgage company subsidiaries of bank holding companies may be placed at a competitive disadvantage with respect to other nonbank real estate lenders. Some commenters also noted that real estate loans made by bank holding companies and nonbank subsidiaries for sale to secondary market investors already are subject to significant underwriting requirements established by these investors.

For the reasons expressed by the commenters on this issue, the Board has determined, for the present time, not to adopt the real estate lending standards for bank holding companies and their nonbank subsidiaries. The Board notes that the real estate lending activities of bank holding companies and their nonbank subsidiaries are not funded by insured deposits, and are subject to limitations imposed on transactions between an insured depository institution and its affiliates by sections 23A and 23B of the Federal Reserve Act. Accordingly, the final rule has been revised to remove the proposed revisions to the Board's Regulation Y. However, the Board will expect bank holding companies and their nonbank subsidiaries to conduct any real estate lending activities in a prudent manner consistent with safe and sound lending standards.

3. U.S. Branches and Agencies of Foreign Banks

A few commenters raised a question as to how U.S. branches and agencies of foreign banks will be treated for purposes of applying the required standards. The agencies intend to apply the final rule to insured branches of foreign banks, since these institutions are considered insured depository institutions for other regulatory purposes and would typically be subject to such rules. At this time, the agencies do not intend to apply the rule directly to uninsured branches or agencies of foreign banks. However, the agencies may consider the final rule as general supervisory guidance when reviewing credit portfolios and practices at such branches and agencies.

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[3] For state member banks, the term "total capital" means "total risk-based capital" as defined in appendix A to 12 CFR part 208. For insured state non-member banks, "total capital" refers to that term as described in Table I of appendix A to 12 CFR part 325. For national banks, the term "total capital" is defined at 12 CFR 3.2(e). For savings associations, the term "total capital" is defined at 12 CFR 567.5(c).

[4] If the requirements of the rule apply by virtue of the operation of section 24(d), an insured state bank would be required to obtain the FDIC's prior consent for any of its subsidiaries to make real estate loans other than in compliance with the final rule.

The FDIC has revised its final rule to clarify that the rule applies to state-licensed insured branches of foreign banks.

4. Phase-in Provision

Section 304(a)(4) of FDICIA provides, among other things, that the regulations adopted pursuant to section 304 "shall become effective not later than 15 months after the date of enactment of [FDICIA]." FDICIA was enacted on December 19, 1991. In the Joint Proposal, the agencies sought comment on whether it would be appropriate, in order to accommodate credit needs, to phase-in the real estate lending standards after the final rule becomes effective.

Comments were received on both sides of this question. Many commenters felt that some additional time would be needed for lenders to adopt LTV limits, revise lending guidelines and policies, re-train loan officers, prepare compliance and auditing programs and procedures, re-evaluate Community Reinvestment Act and other special lending programs, and change bank lending literature. A number of these commenters also noted that a phase-in period would ensure that extensions of credit currently being processed, but not yet funded, under existing underwriting requirements will remain unaffected by the final rule. A few commenters also recommended that the final rule could be phased-in by category of loan, starting with those categories representing the greatest risk to lenders and the federal deposit insurance funds.

In contrast, other commenters asserted that a phase-in period is not required by FDICIA. Many of these commenters also opined that a phase-in period would not be beneficial for lenders because most properly managed insured depository institutions extend credit in a prudent and responsible manner consistent with the proposed regulations. These commenters maintained that, if the proposed real estate lending standards are truly required to protect the safety and soundness of banking, they should be implemented immediately.

The agencies note that, by adopting a final rule at this time, insured institutions will have approximately three months to prepare to implement the requirements of the rule prior to the March 19, 1993, statutory effective date. In view of this delayed effective date, the revisions made to the Joint Proposal, and the incorporation of LTV ratios in the Guidelines rather than in a regulation, the agencies believe that it is not necessary to provide for a phase-in period.

5. OTS Regulations

In the Joint Proposal, the OTS specifically sought comments on the interaction between this rulemaking and the OTS' current regulations. Few commenters addressed this issue. The OTS has determined in the interest of regulatory consistency, as well as interagency consistency, to revise its current lending regulations to ensure that they conform to the real estate lending requirements consistent with this rulemaking. The OTS therefore has deleted duplicative or conflicting requirements, including specific maturity limits and repayment requirements, and, where appropriate, substituted explicit cross-references to this rulemaking.

6. Well-Capitalized Institutions

The agency requested comment on whether they should distinguish among lending institutions in implementing section 304 of FDICIA on the basis of the institution's financial and managerial strength. Several comment letters were received from banks and thrifts that supported special consideration for well-capitalized, well-managed institutions, such as affording them higher LTV limits or increasing the size of their basket of loans in excess of the supervisory LTV limits. In addition, some commenters suggested that well-capitalized institutions be exempted from the final rule because, in the commenters' opinion, these institutions pose minimal risk to the federal deposit insurance funds.

Other commenters objected to exempting well-capitalized institutions from the rule. These commenters cited examples of insured depository institutions that had been well-capitalized but later incurred substantial losses as a result of real estate lending.

Although the agencies recognize that well-capitalized, well-managed institutions pose less risk to the federal deposit insurance funds than other institutions, the agencies have decided to apply the regulation to all institutions. The agencies are concerned that the financial condition of any institution, including a well-capitalized institution, could deteriorate very quickly if prudent real estate lending policies are not followed. While the rule adopted by the agencies does not include special provisions for strong institutions, the Guidelines identify internal characteristics, such as financial condition, as factors to be considered with regard to the real estate lending policies adopted by the institutions.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the agencies hereby certify that the final rule will not have a significant impact on a substantial number of small entities.

The agencies have concluded that the final rule will not have a disparate impact on smaller depository institutions in part because such lenders are likely to make fewer loans, or a narrower range of loans, than larger institutions. Thus, it is expected that the final rule's impact, of the nature contemplated by the Regulatory Flexibility Act, on smaller institutions should be proportionate to its impact on larger institutions.

Moreover, while the final rule applies uniformly to insured depository institutions regardless of size, lenders are required to adopt policies that are appropriate to the size of the institution and the nature and scope of its operations. Similarly, the Guidelines identify as factors to be considered by an institution in formulating its loan policies such internal characteristics as the size of the institution and of its lending staff.

The agencies received and considered comments regarding the likely impact of the Joint Proposal on small depository institutions. As previously described, the agencies have revised the proposal in a number of ways that address the concerns raised by these commenters. The agencies believe that, to the extent that these commenters were concerned about a disproportionate impact on such entities, the flexibility incorporated into the final rule and the Guidelines should adequately address their concerns.

Executive Order No. 12291

The Director of the OTS and the Comptroller of the Currency have independently determined that this regulation does not constitute a "major rule" within the meaning of Executive Order No. 12291 and Treasury Department Guidelines. The final rule requires institutions to adopt real estate lending policies and procedures. Such policies have customarily been an integral part of an institution's prudent lending operations. Because the final regulation merely codifies practices that are already usual and customary, the OTS and OCC believe that this regulation: (1) Would not have an overall effect on the economy of $100,000,000 or more; (2) would not result in a major increase in the cost of financial institution operations or government supervision; and (3) would not have a significant adverse effect on competition, employment, investment, productivity, or innovation, within the meaning of the Executive Order. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information requirements contained in the Joint Proposal have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Due to the changes reflected in the final rule, a resubmission was made to and approved by OMB under control numbers 1550–0078 (OTS), 1557–0190 (OCC), 7100–AB42 (BOARD), and 3064–0112 (FDIC). The revised annual reporting burden for the collection of information from insured depository institutions is estimated as follows:

Estimated number of recordkeepers:	
State nonmember banks (FDIC)	7,550
State member banks (Board)	985
National banks (OCC)	3,750
Savings associations (OTS)	2,000
Estimated average annual burden per recordkeeper (based on an initial 3-year period)	40 hours
Estimated total annual recordkeeping burden:	
FDIC	302,000 hours
Board	39,400 hours
OCC	150,000 hours
OTS	80,000 hours

Comments concerning the accuracy of this estimate and suggestions on reducing the burden should be sent to Gary Waxman, Office of Information and Regulatory Affairs, Attention—Paperwork Reduction Project Number: 3064–0112 (FDIC); 7100–AB42 (BOARD); 1557–0190 (OCC); 1550–0078 (OTS), OMB, New Executive Office Building, room 3208, Washington, DC 20503; and to the appropriate agency, as follows:

FDIC. Assistant Executive Secretary (Administration), room F–453, Paperwork Reduction Project Number 3064–0112, Federal Deposit Insurance Corporation, Washington, DC 20429.

Board. Mr. William W. Wiles, Secretary, Paperwork Reduction Project Number 7100–AB42, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

OCC. Legislative, Regulatory, and International Activities Division, Paperwork Reduction Project Number 1557–0190, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS. Supervision Policy, Paperwork Reduction Project Number 1550–0078, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The recordkeeping and collection of information in this interagency rulemaking is required in 12 CFR part 365 (FDIC); 12 CFR part 208, subpart C (FRB); 12 CFR part 34, subpart D (OCC); and 12 CFR 563.100–101 (OTS). The likely recordkeepers are insured depository institutions. The recordkeeping is required by the agencies to protect the deposit insurance funds and to ensure safe and sound operation of insured depository institutions.

Institutions will use the lending policies to guide their lending operations in a manner that is consistent with safe and sound banking practices and appropriate to their size and nature and scope of their operations. These policies should address certain lending considerations, including loan-to-value limits, loan administration policies, portfolio diversification standards, and documentation, approval, and reporting requirements. The agencies will use this information in their examination of institutions to ensure that the real estate loans made by those institutions are consistent with existing statutory and regulatory criteria, with principles of safety and soundness, and with relevant policy guidance.

Text of Final Common Rule

The text of the final common rule appears below:

Appendix to —Interagency Guidelines for Real Estate Lending Policies

The agencies' regulations require that each insured depository institution adopt and maintain a written policy that establishes appropriate limits and standards for all extensions of credit that are secured by liens on or interests in real estate or made for the purpose of financing the construction of a building or other improvements.[5] These guidelines are intended to assist institutions in the formulation and maintenance of a real estate lending policy that is appropriate to the size of the institution and the nature and scope of its individual operations, as well as satisfies the requirements of the regulation.

Each institution's policies must be comprehensive, and consistent with safe and sound lending practices, and must ensure that the institution operates within limits and according to standards that are reviewed and approved at least annually by the board of directors. Real estate lending is an integral part of many institutions' business plans and, when undertaken in a prudent manner, will not be subject to examiner criticism.

Loan Portfolio Management Considerations

The lending policy should contain a general outline of the scope and distribution of the institution's credit facilities and the manner in which real estate loans are made, serviced, and collected. In particular, the institution's policies on real estate lending should:

- Identify the geographic areas in which the institution will consider lending.
- Establish a loan portfolio diversification policy and set limits for real estate loans by type and geographic market (e.g., limits on higher risk loans).
- Identify appropriate terms and conditions by type of real estate loan.
- Establish loan origination and approval procedures, both generally and by size and type of loan.
- Establish prudent underwriting standards that are clear and measurable, including loan-to-value limits, that are consistent with these supervisory guidelines.
- Establish review and approval procedures for exception loans, including loans with loan-to-value percentages in excess of supervisory limits.
- Establish loan administration procedures, including documentation, disbursement, collateral inspection, collection, and loan review.
- Establish real estate appraisal and evaluation programs.
- Require that management monitor the loan portfolio and provide timely and adequate reports to the board of directors.

The institution should consider both internal and external factors in the formulation of its loan policies and strategic plan. Factors that should be considered include:

- The size and financial condition of the institution.
- The expertise and size of the lending staff.
- The need to avoid undue concentrations of risk.
- Compliance with all real estate related laws and regulations, including the Community Reinvestment Act, anti-discrimination laws, and for savings associations, the Qualified Thrift Lender test.
- Market conditions.

The institution should monitor conditions in the real estate markets in its lending area so that it can react quickly to changes in market conditions that are relevant to its lending decisions. Market supply and demand factors that should be considered include:

- Demographic indicators, including population and employment trends.

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[5] The agencies have adopted a uniform rule on real estate lending. See 12 CFR part 365 (FDIC); 12 CFR part 208, subpart C (FRB); 12 CFR part 34, subpart D (OCC); and 12 CFR 563.100–101 (OTS).

- Zoning requirements.
- Current and projected vacancy, construction, and absorption rates.
- Current and projected lease terms, rental rates, and sales prices, including concessions.
- Current and projected operating expenses for different types of projects.
- Economic indicators, including trends and diversification of the lending area.
- Valuation trends, including discount and direct capitalization rates.

Underwriting Standards

Prudently underwritten real estate loans should reflect all relevant credit factors, including:

- The capacity of the borrower, or income from the underlying property, to adequately service the debt.
- The value of the mortgaged property.
- The overall creditworthiness of the borrower.
- The level of equity invested in the property.
- Any secondary sources of repayment.
- Any additional collateral or credit enhancements (such as guarantees, mortgage insurance or takeout commitments).

The lending policies should reflect the level of risk that is acceptable to the board of directors and provide clear and measurable underwriting standards that enable the institution's lending staff to evaluate these credit factors. The underwriting standards should address:

- The maximum loan amount by type of property.
- Maximum loan maturities by type of property.
- Amortization schedules.
- Pricing structure for different types of real estate loans.
- Loan-to-value limits by type of property.

For development and construction projects, and completed commercial properties, the policy should also establish, commensurate with the size and type of the project or property:

- Requirements for feasibility studies and sensitivity and risk analyses (*e.g.*, sensitivity of income projections to changes in economic variables such as interest rates, vacancy rates, or operating expenses).
- Minimum requirements for initial investment and maintenance of hard equity by the borrower (*e.g.*, cash or unencumbered investment in the underlying property).
- Minimum standards for net worth, cash flow, and debt service coverage of the borrower or underlying property.
- Standards for the acceptability of and limits on non-amortizing loans.
- Standards for the acceptability of and limits on the use of interest reserves.
- Pre-leasing and pre-sale requirements for income-producing property.
- Pre-sale and minimum unit release requirements for non-income-producing property loans.
- Limits on partial recourse or nonrecourse loans and requirements for guarantor support.
- Requirements for takeout commitments.
- Minimum covenants for loan agreements.

Loan Administration

The institution should also establish loan administration procedures for its real estate portfolio that address:

- Documentation, including:
  - Type and frequency of financial statements, including requirements for verification of information provided by the borrower.
  - Type and frequency of collateral evaluations (appraisals and other estimates of value).
- Loan closing and disbursement.
- Payment processing.
- Escrow administration.
- Collateral administration.
- Loan payoffs.
- Collections and foreclosure, including:
  - Delinquency follow-up procedures.
  - Foreclosure timing.
  - Extensions and other forms of forbearance.
  - Acceptance of deeds in lieu of foreclosure.
- Claims processing (*e.g.*, seeking recovery on a defaulted loan covered by a government guaranty or insurance program).
- Servicing and participation agreements.

Supervisory Loan-to-Value Limits

Institutions should establish their own internal loan-to-value limits for real estate loans. These internal limits should not exceed the following supervisory limits:

Loan category	Loan-to-value limit (percent)
Raw land	65
Land development	75
Construction:	
Commercial, multifamily,[1] and other nonresidential	80
1- to 4-family residential	85
Improved property	85
Owner-occupied 1- to 4-family and home equity	([2])

[1] Multifamily construction includes condominiums and cooperatives.

[2] A loan-to-value limit has not been established for permanent mortgage or home equity loans on owner-occupied, 1- to 4-family residential property. However, for any such loan with a loan-to-value ratio that equals or exceeds 90 percent at origination, an institution should require appropriate credit enhancement in the form of either mortgage insurance or readily marketable collateral.

The supervisory loan-to-value limits should be applied to the underlying property that collateralizes the loan. For loans that fund multiple phases of the same real estate project (e.g., a loan for both land development and construction of an office building), the appropriate loan-to-value limit is the limit applicable to the final phase of the project funded by the loan; however, loan disbursements should not exceed actual development or construction outlays. In situations where a loan is fully cross-collateralized by two or more properties or is secured by a collateral pool of two or more properties, the appropriate maximum loan amount under supervisory loan-to-value limits is the sum of the value of each property, less senior liens, multiplied by the appropriate loan-to-value limit for each property. To ensure that collateral margins remain within the supervisory limits, lenders should redetermine conformity whenever collateral substitutions are made to the collateral pool.

In establishing internal loan-to-value limits, each lender is expected to carefully consider the institution-specific and market factors listed under "Loan Portfolio Management Considerations," as well as any other relevant factors, such as the particular subcategory or type of loan. For any subcategory of loans that exhibits greater credit risk than the overall category, a lender should consider the establishment of an internal loan-to-value limit for that subcategory that is lower than the limit for the overall category.

The loan-to-value ratio is only one of several pertinent credit factors to be considered when underwriting a real estate loan. Other credit factors to be taken into account are highlighted in the "Underwriting Standards" section above. Because of these other factors, the establishment of these supervisory limits should not be interpreted to mean that loans at these levels will automatically be considered sound.

Loans in Excess of the Supervisory Loan-to-Value Limits

The agencies recognize that appropriate loan-to-value limits vary not only among categories of real estate loans but also among individual loans. Therefore, it may be appropriate in individual cases to originate or purchase loans with loan-to-value ratios in excess of the supervisory loan-to-value limits, based on the support provided by other credit factors. Such loans should be identified in the institutions's records, and their aggregate amount reported at least quarterly to the institution's board of directors. (See additional reporting requirements described under "Exceptions to the General Policy.")

The aggregate amount of all loans in excess of the supervisory loan-to-value limits should not exceed 100 percent of total capital.[2] Moreover, within the aggregate limit, total loans for all commercial, agricultural, multifamily or other non-1-to-4 family residential properties should not exceed 30 percent of total capital. An institution will come under increased supervisory scrutiny as the total of such loans approaches these levels.

In determining the aggregate amount of such loans, institutions should: (a) Include all loans secured by the same property if any one of those loans exceeds the supervisory loan-to-value limits; and (b) include the recourse obligation of any such loan sold with recourse. Conversely, a loan should no longer be reported to the directors as part of aggregate totals when reduction in principal or senior liens, or additional contribution of collateral or equity (e.g., improvements to the real property securing the loan), bring the loan-to-value ratio into compliance with supervisory limits.

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[2] For the state member banks, the term "total capital" means "total risk-based capital" as defined in appendix A to 12 CFR part 208. For insured state non-member banks, "total capital" refers to that term described in table I of appendix A to 12 CFR part 325. For national banks, the term "total capital" is defined at 12 CFR 3.2(e). For savings associations, the term "total capital" is defined at 12 CFR 567.5(c).

Excluded Transactions

The agencies also recognize that there are a number of lending situations in which other factors significantly outweigh the need to apply the supervisory loan-to-value limits. These include:

- Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the supervisory loan-to-value limit.
- Loans backed by the full faith and credit of a state government, provided that the amount of the assurance is at least equal to the portion of the loan that exceeds the supervisory loan-to-value limit.
- Loans guaranteed or insured by a state, municipal or local government, or an agency thereof, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the supervisory loan-to-value limit, and provided that the lender has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.
- Loans that are to be sold promptly after origination, within recourse, to a financially responsible third party.
- Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs), or loans that are renewed, refinanced, or restructured in connection with a workout situation, either with or without the advancement of new funds, where consistent with safe and sound banking practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.
- Loans that facilitate the sale of real estate acquired by the lender in the ordinary course of collecting a debt previously contracted in good faith.
- Loans for which a lien on or interest in real property is taken as additional collateral through an abundance of caution by the lender (e.g., the institution takes a blanket lien on all or substantially all of the assets of the borrower, and the value of the real property is low relative to the aggregate value of all other collateral).
- Loans, such as working capital loans, where the lender does not rely principally on real estate as security and extension of credit is not used to acquire, develop, or construct permanent improvements on real property.
- Loans for the purpose of financing permanent improvements to real property, but not secured by the property, if such security interest is not required by prudent underwriting practice.

Exceptions to the General Lending Policy

Some provision should be made for the consideration of loan requests from creditworthy borrowers whose credit needs do not fit within the institution's general lending policy. An institution may provide for prudently underwritten exceptions to its lending policies, including loan-to-value limits, on a loan-by-loan basis. However, any exceptions from the supervisory loan-to-value limits should conform to the aggregate limits on such loans discussed above.

The board of directors is responsible for establishing standards for the review and approval of exception loans. Each institution should establish an appropriate internal process for the review and approval of loans that do not conform to its own internal policy standards. The approval of any such loan should be supported by a written justification that clearly sets forth all of the relevant credit factors that support the underwriting decision. The justification and approval documents for such loans should be maintained as a part of the permanent loan file. Each institution should monitor compliance with its real estate lending policy and individually report exception loans of a significant size to its board of directors.

Supervisory Review of Real Estate Lending Policies and Practices

The real estate lending policies of institutions will be evaluated by examiners during the course of their examinations to determine if the policies are consistent with safe and sound lending practices, these guidelines, and the requirements of the regulation. In evaluating the adequacy of the institution's real estate lending policies and practices, examiners will take into consideration the following factors:

- The nature and scope of the institution's real estate lending activities.
- The size and financial condition of the institution.
- The quality of the institution's management and internal controls.
- The expertise and size of the lending and loan administration staff.
- Market conditions.

Lending policy exception reports will also be reviewed by examiners during the course of their examinations to determine whether the institutions' exceptions are adequately documented and appropriate in light of all of the relevant credit considerations. An excessive volume of exceptions to an institution's real estate lending policy may signal a weakening of its underwriting practices, or may suggest a need to revise the loan policy.

Definitions

For the purposes of these Guidelines:

Construction loan means an extension of credit for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

Extension of credit or *loan* means:

(1) The total amount of any loan, line of credit, or other legally binding lending commitment with respect to real property; and

(2) The total amount, based on the amount of consideration paid, of any loan, line of credit, or other legally binding lending commitment acquired by a lender by purchase, assignment, or otherwise.

Improved property loan means an extension of credit secured by one of the following types of real property:

(1) Farmland, ranchland or timberland committed to ongoing management and agricultural production;

(2) 1- to 4-family residential property that is not owner-occupied;

(3) Residential property containing five or more individual dwelling units;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use, except income-producing owner-occupied 1- to 4-family residential property.

Land development loan means an extension of credit for the purpose of improving unimproved real property prior to the erection of structures. The improvement of unimproved real property may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

Loan origination means the time of inception of the obligation to extend credit (i.e., when the last event or prerequisite, controllable by the lender, occurs causing the lender to become legally bound to fund an extension of credit).

Loan-to-value or *loan-to-value ratio* means the percentage or ratio that is derived at the time of loan origination by dividing an extension of credit by the total value of the property(ies) securing or being improved by the extension of credit plus the amount of any readily marketable collateral and other acceptable collateral that secures the extension of credit. The total amount of all senior liens on or interests in such property(ies) should be included in determining the loan-to-value ratio. When mortgage insurance or collateral is used in the calculation of the loan-to-value ratio, and such credit enhancement is later released or replaced, the loan-to-value ratio should be recalculated.

Other acceptable collateral means any collateral in which the lender has a perfected security interest, that has a quantifiable value, and is accepted by the lender in accordance with safe and sound lending practices. Other acceptable collateral should be appropriately discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral. Other acceptable collateral includes, among other items, unconditional irrevocable standby letters of credit for the benefit of the lender.

Owner-occupied, when used in conjunction with the term *1- to 4-family residential property* means that the owner of the underlying real property occupies at least one unit of the real property as a principal residence of the owner.

Readily marketable collateral means insured deposits, financial instruments, and bullion in which the lender has a perfected interest. Financial instruments and bullion must be salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market. Readily marketable collateral should be appropriately discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral.

Value means an opinion or estimate, set forth in an appraisal or evaluation, whichever may be appropriate, of the market value of real property, prepared in accordance with the agency's appraisal regulations and guidance. For loans to purchase an existing property, the term "value" means the lesser of the actual acquisition cost or the estimate of value.

1- to 4-family residential property means property containing fewer than five individual dwelling units, including manufactured homes permanently affixed to the underlying property (when deemed to be real property under state law).

Adoption of a Final Common Rule

The agency specific adoption of the final common rule, which appears at the end of the common preamble, appears below.

List of Subjects

12 CFR Part 34

Mortgages, National banks, Real estate appraisals, Real estate lending standards, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Federal Reserve System, Real estate lending standards, Reporting and recordkeeping requirements, Securities.

12 CFR Part 365

Banks, banking, Credit, Mortgages, Real estate appraisals, Real estate lending standards, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

I. Office of the Comptroller of the Currency

12 CFR Part 34

For the reasons set out in the preamble, part 34 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 34—[AMENDED]

1. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 371, 1701j–3, 1828(o), and 3331 *et seq.*

2. A new Subpart D—Real Estate Lending Standards is added to part 34 to read as follows:

Subpart D—Real Estate Lending Standards

Sec.
34.61 Purpose and scope.
34.62 Real estate lending standards.

Appendix A to Subpart D of Part 34—Interagency Guidelines for Real Estate Lending Policies

Subpart D—Real Estate Lending Standards

§ 34.61 Purpose and scope.

This subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes standards for real estate lending to be used by national banks in adopting internal real estate lending policies.

§ 34.62 Real estate lending standards.

(a) Each national bank shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b)(1) Real estate lending policies adopted pursuant to this section must:

(i) Be consistent with safe and sound banking practices;

(ii) Be appropriate to the size of the institution and the nature and scope of its operations; and

(iii) Be reviewed and approved by the bank's board of directors at least annually.

(2) The lending policies must establish:

(i) Loan portfolio diversification standards;

(ii) Prudent underwriting standards, including loan-to-value limits, that are clear and measurable;

(iii) Loan administration procedures for the bank's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the bank's real estate lending policies.

(c) Each national bank must monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

(d) The real estate lending policies adopted pursuant to this section should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies established by the Federal bank and thrift supervisory agencies.

3. Appendix A is added to subpart D of part 34 to read as set forth at the end of the preamble.

Appendix A to Subpart D of Part 34—Interagency Guidelines for Real Estate Lending

II. Federal Reserve System

12 CFR Part 208

For the reasons set out in the preamble, the Board of Governors amends 12 CFR part 208 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for 12 CFR part 208 is revised to read as follows:

Authority: Secs. 9, 11(a), 11(c), 19, 21, 25 and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321–338, 248(a), 248(c), 461, 481–486, 601, and 611, respectively); secs. 4, 13(j), 18(o), and 38 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814, 1823(j), 1828(o), and 1831o, respectively); sec. 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); secs. 907–910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906–3909); secs. 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w, respectively); sec. 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and secs. 1101–1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331–3351).

2. A new Subpart C, comprising §§ 208.51 through 208.52, is added to part 208 to read as follows:

Subpart C—Real Estate Lending Standards

Sec.
208.51 Purpose and scope.
208.52 Real estate lending standards.

Subpart C—Real Estate Lending Standards

§ 208.51 Purpose and scope.

This subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes standards for real estate lending to be used by state member banks in adopting internal real estate lending policies.

§ 208.52 Real estate lending standards.

(a) Each state bank that is a member of the Federal Reserve System shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b)(1) Real estate lending policies adopted pursuant to this section must:

(i) Be consistent with safe and sound banking practices;

(ii) Be appropriate to the size of the institution and the nature and scope of its operations; and

(iii) Be reviewed and approved by the bank's board of directors at least annually.

(2) The lending policies must establish:

(i) Loan portfolio diversification standards;

(ii) Prudent underwriting standards, including loan-to-value limits, that are clear and measurable;

(iii) Loan administration procedures for the bank's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the bank's real estate lending policies.

(c) Each state member bank must monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

(d) The real estate lending policies adopted pursuant to this section should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies established by the Federal bank and thrift supervisory agencies.

3. A new Appendix C is added to part 208 to read as set forth at the end of the preamble.

Appendix C to Part 208—Interagency Guidelines for Real Estate Lending Policies

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III. Federal Deposit Insurance Corporation

12 CFR Part 365

For the reasons set out in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends 12 CFR chapter III as set forth below:

1. Part 365 is added to read as follows:

PART 365—REAL ESTATE LENDING STANDARDS

Sec.
365.1 Purpose and scope.
365.2 Real estate lending standards.

Appendix A to Part 365—Interagency Guidelines for Real Estate Lending Policies

Authority: 12 U.S.C. 1828(o).

§ 365.1 Purpose and scope.

This part, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes standards for real estate lending to be used by insured state nonmember banks (including state-licensed insured branches of foreign banks) in adopting internal real estate lending policies.

§ 365.2 Real estate lending standards.

(a) Each insured state nonmember bank shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b)(1) Real estate lending policies adopted pursuant to this section must:

(i) Be consistent with safe and sound banking practices;

(ii) Be appropriate to the size of the institution and the nature and scope of its operations; and

(iii) Be reviewed and approved by the bank's board of directors at least annually.

(2) The lending policies must establish:

(i) Loan portfolio diversification standards;

(ii) Prudent underwriting standards, including loan-to-value limits, that are clear and measurable;

(iii) Loan administration procedures for the bank's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the bank's real estate lending policies.

(c) Each insured state nonmember bank must monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

(d) The real estate lending policies adopted pursuant to this section should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies established by the Federal bank and thrift supervisory agencies.

2. Appendix A is added to part 365 to read as set forth at the end of the preamble.

Appendix A to Part 365—Interagency Guidelines for Real Estate Lending Policies

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IV. Office of Thrift Supervision

12 CFR Parts 545 and 563

For the reasons set out in the preamble, the Office of Thrift Supervision amends parts 545 and 563, chapter V, title 12 of the Code of Federal Regulations, as follows:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—[AMENDED]

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Section 545.32 is amended by removing paragraph (b)(2), redesignating paragraph (b)(1) as paragraph (b)(2); removing the phrase "Subject to the limitations of § 545.33(e)" where it appears in paragraph (b)(3) and adding in lieu thereof the phrase "Subject to the limitations of § 545.33(c)"; by adding a new paragraph (b)(1); and by revising paragraph (d) to read as follows:

§ 545.32 Real estate loans.

* * * * *

(b) *General*—(1) *Real estate lending standards.* Federal savings associations shall establish prudent real estate lending standards, including requirements on disbursements, maximum loan terms, amortization, and repayment.

* * * * *

(d) *Loan-to-value ratios.* (1) Loan-to-value ratios shall be determined in accordance with §§ 563.100 and 563.101 of this chapter.

(2) For private mortgage insurance requirements in accordance with §§ 563.100 and 563.101 of this chapter, a Federal savings association shall require insurance or guarantees by a mortgage insurance company that the Federal Home Loan Mortgage Corporation of the Federal National Mortgage Association have determined to be a "qualified private insurer."

§ 545.33 [Amended]

3. Section 545.33 is amended by:

a. Removing paragraphs (a) and (b);

b. Redesignating paragraphs (c) through (h) as paragraphs (a) through (f), respectively;

c. By removing the phrase "pursuant to § 545.32(d) of this part" where it appears in the first sentence of newly designated paragraph (b)(1) and adding in lieu thereof the phrase "pursuant to §§ 563.100 and 563.101 of this chapter";

(d) By removing the phrase "authorized by paragraph (c) or (e) of this section" where it appears in the second sentence of newly designated paragraph (b)(1) and adding in lieu thereof the phrase "authorized by paragraph (a) or (c) of this section";

e. By removing the phrase "the requirements of this paragraph (d)," where it appears in the third sentence of the newly designated paragraph (b)(1) and adding in lieu thereof the phrase "the requirements of this paragraph (b),".

f. By removing the phrase "pursuant to the paragraph (e)(2)(i) of this section" where it appears in the third sentence of newly designated paragraph (b)(1) and adding in lieu thereof the phrase "pursuant to paragraph (c)(2)(i) of this section";

g. By removing the phrases "pursuant to paragraph (c) or (e) of this section" and "permissible under § 545.32(d) of this part" where they appear in the introductory text of newly designated paragraph (b)(2) and adding in lieu thereof the phrases "pursuant to paragraph (a) and (c) of this section" and "permissible under §§ 563.100 and 563.101 of this chapter", respectively;

h. By removing the phrase "and shall be repayable within eighteen months" where it appears in newly designated paragraph (e);

i. And by removing the phrase "§ 545.33(c) and (e)" where it appears in newly designated paragraph (f) and adding in lieu thereof the phrase "§ 545.33(a) and (c)".

4. Section 545.35 is amended by removing paragraphs (a) through (c), by redesignating paragraph (d) as paragraph (b), and by adding a new paragraph (a) to read as follows:

§ 545.35 Other real estate loans.

* * * * *

(a) A Federal association shall apply standards as established in accordance with § 545.32(b)(1) of this part.

* * * * *

5. Section 545.36 is amended by revising paragraphs (a) and (b) to read as follows:

§ 545.36 Loans to acquire or improve real estate.

* * * * *

(a) Such loans shall adhere to the standards adopted under §§ 563.100 and 563.101 of this chapter.

(b) Such loans shall be repayable in accordance with § 545.32(b)(1) of this part.

* * * * *

6. Section 545.37 is amended by removing paragraphs (c) and (d) and revising paragraph (b) to read as follows:

§ 545.37 Combination loans.

* * * * *

(b) The standards applicable in § 545.32(b)(1) shall apply with respect to a combination of loans to finance development of real estate and loans on building lots and sites and/or construction loans, whether or not development has been completed.

§ 545.40 [Amended]

7. Section 545.40 is amended by removing the phrase "in this part" where it appears in the introductory text to the section; and by removing the phrase "specified in § 545.32(d)" where it appears in the concluding text of the section and adding in lieu thereof the phrase "specified in §§ 563.100 and 563.101 of this chapter".

8. Section 545.42 is revised to read as follows:

§ 545.42 Home improvement loans.

For any home improvement loan, with or without security, made pursuant to section 5(c)(1)(J) of the Act, Federal savings associations shall establish prudent lending standards, including requirements on disbursements, maximum loan terms, amortization and repayment. No loan contract may provide for the deferral and capitalization of interest on a loan made under this section.

§ 545.45 [Amended]

9. Section 545.45 is amended by removing the phrase "authorized under § 545.33(c) and (e) of this part" where it appears in paragraph (d)(2)(ii) and adding in lieu thereof the phrase "authorized under § 545.33(a) and (c) of this part"; and by removing the phrase "may be treated as a home loan under § 545.33" where it appears in paragraph (d)(3)(i) and adding in lieu thereof the phrase "may be treated as a home loan under §§ 563.100 and 563.101 of this chapter".

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

10. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106; Pub. L. 102–242, sec. 306, 105 Stat. 2236, 2355 (1991).

§ 563.97 [Amended]

11. Section 563.97 is amended by removing the phrase "may do so only if such loans comply with § 545.38(a) or § 545.32(d)(2) of this chapter" where it appears in paragraph (a) and adding in lieu thereof the phrase "may do so only if such loans comply with § 545.38(a) or §§ 563.100 and 563.101 of this chapter".

12. New §§ 563.100 and 563.101 are added to subpart D of part 563 to read as follows:

§ 563.100 Real estate lending standards; purpose and scope.

This section, and § 563.101 of this subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes standards for real estate lending to be used by savings associations and all their includable subsidiaries, as defined in 12 CFR 567.1 (l), over which the savings associations exercise control, in adopting internal real estate lending policies.

§ 563.101 Real estate lending standards.

(a) Each savings association shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b)(1) Real estate lending policies adopted pursuant to this section must:

(i) Be consistent with safe and sound banking practices;

(ii) Be appropriate to the size of the institution and the nature and scope of its operations; and

(iii) Be reviewed and approved by the savings association's board of directors at least annually.

(2) The lending policies must establish:

(i) Loan portfolio diversification standards;

(ii) Prudent underwriting standards, including loan-to-value limits, that are clear and measurable;

(iii) Loan administration procedures for the savings association's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the savings association's real estate lending policies.

(c) Each savings association must monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

(d) The real estate lending policies adopted pursuant to this section should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies established by the Federal bank and thrift supervisory agencies.

13. Appendix A is added to subpart D of part 563 to read as set forth at the end of the preamble.

Appendix A to Subpart D of Part 563—Interagency Guidelines for Real Estate Lending

Dated: November 22, 1992.

By the Office of the Comptroller of the Currency.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

Dated: December 2, 1992.

By the Board of Governors of the Federal Reserve System.

William W. Wiles,

Secretary of the Board of Governors of the Federal Reserve System.

Dated: October 27, 1992.

By The Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

Dated: November 5, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-31481 Filed 12-30-92; 8:45 am]

BILLING CODE 4810-33-M, 6210-01-M, 6714-01-M, 6720-01-M

federal register

Thursday
December 31, 1992

Part VII

Department of Commerce

International Trade Administration

Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Publication of annual listing of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482-0983 or 482-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA.

Dated: December 28, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

BILLING CODE 3510-DS-M

APPENDIX

QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross 1/ Subsidy	Net 2/ Subsidy
Belgium	European Community (EC) Restitution Payments	52.2¢/lb.	52.2¢/lb.
Canada	Export Assistance on Certain Types of Cheese............	28.1¢/lb.	28.1¢/lb.
Denmark	EC Restitution Payments	66.3¢/lb.	66.3¢/lb.
Finland	Export Subsidy	179.7¢/lb.	179.7¢/lb.
France	EC Restitution Payments	66.0¢/lb.	66.0¢/lb.
Greece	EC Restitution Payments	71.8¢/lb.	71.8¢/lb.
Ireland	EC Restitution Payments	71.8¢/lb.	71.8¢/lb.
Italy	EC Restitution Payments	70.8¢/lb.	70.8¢/lb.
Luxembourg ..	EC Restitution Payments	52.2¢/lb.	52.2¢/lb.
Netherlands .	EC Restitution Payments	55.6¢/lb.	55.6¢/lb.
Norway	Indirect (Milk) Subsidy	21.1¢/lb.	21.1¢/lb.
	Consumer Subsidy	46.8¢/lb.	46.8¢/lb.
		67.9¢/lb.	67.9¢/lb.
Portugal.....	EC Restitution Payments	50.8¢/lb.	50.8¢/lb.
Spain	EC Restitution Payments	49.7¢/lb.	49.7¢/lb.
Switzerland .	Deficiency Payments	199.7¢/lb.	199.7¢/lb.
U.K.	EC Restitution Payments	45.8¢/lb.	45.8¢/lb.
W. Germany ..	EC Restitution Payments	63.1¢/lb.	63.1¢/lb.

1/ Defined in 19 U.S.C. 1677(5).

2/ Defined in 19 U.S.C. 1677(6).

[FR Doc. 92-31920 Filed 12-30-92; 8:45 am]

BILLING CODE 3510-DS-C

federal register

Thursday
December 31, 1992

Part VIII

The President

Executive Order 12826—Adjustments of Certain Rates of Pay and Allowances

Federal Register
Vol. 57, No. 252
Thursday, December 31, 1992

Presidential Documents

Title 3—

The President

Executive Order 12826 of December 30, 1992

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 704 of Public Law 101–194; section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509; section 633 of Public Law 101–509; section 301(a) of Public Law 102–40; section 304 of Public Law 102–395; section 601 of Public Law 102–484; section 31 of title 2, United States Code; section 104 of title 3, United States Code; sections 5303, 5318, and 5382 of title 5, United States Code; and section 461(a) of title 28, United States Code, it is hereby ordered as follows:

Section 1. *Statutory pay systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1), as amended by section 2(25) of Public Law 102–378) are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* Pursuant to section 5382 of title 5, United States Code, the rates of basic pay for members of the Senior Executive Service are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive salaries.* The rates of pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5316, 5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and Judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a); section 304 of Public Law 102–395) at Schedule 7.

Sec. 4. *Uniformed services.* Pursuant to section 601 of Public Law 102–484, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services are set forth at Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Interim geographic adjustments.* (a) Pursuant to section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509, employees under statutory pay systems covered under section 1 of this order, and members of the United States Park Police, who are assigned to a duty station located in one of the geographical areas listed in Schedule 9 shall be entitled, except as may be provided under subsection (b) of this section, to receive an interim geographic adjustment at the rate shown on Schedule 9, which schedule is attached hereto and made a part hereof.

(b)(1) The Office of Personnel Management shall prescribe regulations governing the application of interim geographic adjustments to General Schedule employees, including the determination of what, if any, geographic adjustment shall be payable in the case of employees receiving special pay rates.

(2) The Secretary of State shall prescribe regulations governing the application of interim geographic adjustments to employees under the Foreign Service Schedule, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(3) The Secretary of Veterans Affairs shall prescribe regulations governing the application of interim geographic adjustments to employees under the schedules for the Veterans Health Administration of the Department of Veterans Affairs, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(4) The Secretary of the Interior shall prescribe regulations governing the application of interim geographic adjustments to members of the United States Park Police, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(c) The Office of Personnel Management is hereby designated and empowered to exercise the authority of the President under section 302(c)(1) (D) of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509, to extend the application of interim geographic adjustments shown on Schedule 9, upon the request of an agency head, to employees who would not otherwise be covered.

Sec. 6. *Effective dates.* The rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for at Schedule 8 are effective on January 1, 1993. The other schedules provided for herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1993.

Sec. 7. Executive Order No. 12786 of December 26, 1991, is superseded.

George Bush

THE WHITE HOUSE,
December 30, 1992.

Billing code 3195–01–M

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1993)

	1	2	3	4	5	6	7	8	9	10
GS-1	$11,903	$12,300	$12,695	$13,090	$13,487	$13,720	$14,109	$14,503	$14,521	$14,891
2	13,382	13,701	14,145	14,521	14,683	15,115	15,547	15,979	16,411	16,843
3	14,603	15,090	15,577	16,064	16,551	17,038	17,525	18,012	18,499	18,986
4	16,393	16,939	17,485	18,031	18,577	19,123	19,669	20,215	20,761	21,307
5	18,340	18,951	19,562	20,173	20,784	21,395	22,006	22,617	23,228	23,839
6	20,443	21,124	21,805	22,486	23,167	23,848	24,529	25,210	25,891	26,572
7	22,717	23,474	24,231	24,988	25,745	26,502	27,259	28,016	28,773	29,530
8	25,159	25,998	26,837	27,676	28,515	29,354	30,193	31,032	31,871	32,710
9	27,789	28,715	29,641	30,567	31,493	32,419	33,345	34,271	35,197	36,123
10	30,603	31,623	32,643	33,663	34,683	35,703	36,723	37,743	38,763	39,783
11	33,623	34,744	35,865	36,986	38,107	39,228	40,349	41,470	42,591	43,712
12	40,298	41,641	42,984	44,327	45,670	47,013	48,356	49,699	51,042	52,385
13	47,920	49,517	51,114	52,711	54,308	55,905	57,502	59,099	60,696	62,293
14	56,627	58,515	60,403	62,291	64,179	66,067	67,955	69,843	71,731	73,619
15	66,609	68,829	71,049	73,269	75,489	77,709	79,929	82,149	84,369	86,589

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1993)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$66,609	$53,973	$43,734	$35,438	$28,715	$25,670	$22,948	$20,515	$18,340
2	68,607	55,592	45,046	36,501	29,576	26,440	23,636	21,130	18,890
3	70,665	57,260	46,397	37,596	30,464	27,233	24,346	21,764	19,457
4	72,785	58,978	47,789	38,724	31,378	28,050	25,076	22,417	20,041
5	74,969	60,747	49,223	39,886	32,319	28,892	25,828	23,090	20,642
6	77,218	62,569	50,700	41,082	33,289	29,759	26,603	23,783	21,261
7	79,535	64,447	52,221	42,315	34,287	30,651	27,401	24,496	21,899
8	81,921	66,380	53,787	43,584	35,316	31,571	28,223	25,231	22,556
9	84,378	68,371	55,401	44,892	36,375	32,518	29,070	25,988	23,233
10	86,589	70,423	57,063	46,239	37,467	33,494	29,942	26,767	23,930
11	86,589	72,535	58,775	47,626	38,591	34,498	30,840	27,570	24,647
12	86,589	74,711	60,538	49,054	39,748	35,533	31,765	28,398	25,387
13	86,589	76,953	62,354	50,526	40,941	36,599	32,718	29,249	26,148
14	86,589	79,261	64,225	52,042	42,169	37,697	33,700	30,127	26,933

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES, DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1993)

Section 7306 Schedule*

Deputy Chief Medical Director	$113,122
Associate Deputy Chief Medical Director	108,349**
Assistant Chief Medical Directors	105,156

	Mini	Maximum
Medical Directors	$89,720	$101,684
Director of Pharmacy Service	78,122	97,020
Director of Dietetic Service	78,122	97,020
Director of Podiatric Service	78,122	97,020
Director of Optometric Service	78,122	97,020
Director of Chaplain Service	78,122	97,020

Physician and Dentist Schedule

Director Grade	$78,122	$97,020
Executive Grade	72,136	91,935
Chief Grade	66,609	86,589
Senior Grade	56,627	73,619
Intermediate Grade	47,920	62,293
Full Grade	40,298	52,385
Associate Grade	33,623	43,712

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$66,609	$86,589
Senior Grade	56,627	73,619
Intermediate Grade	47,920	62,293
Full Grade	40,298	52,385
Associate Grade	33,623	43,712

Physician Assistant and Expanded-Function Dental Auxiliary Schedule***

Director Grade	$66,609	$86,589
Assistant Director Grade	56,627	73,619
Chief Grade	47,920	62,293
Senior Grade	40,298	52,385
Intermediate Grade	33,623	43,712
Full Grade	27,789	36,123
Associate Grade	23,914	31,087
Junior Grade	20,443	26,572

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* Does not apply to the Assistant Chief Medical Director for Nursing Programs or the Director of Nursing Service. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451(d)(3)(C).

** The rate of basic pay payable to this employee is limited to the rate for level V of the Executive Schedule, which is $108,200.

*** Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1993)

ES-1	$92,900
ES-2	97,400
ES-3	101,800
ES-4	107,300
ES-5	111,800
ES-6	115,700

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1993)

level I	$148,400
level II	133,600
level III	123,100
level IV	115,700
level V	108,200

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1993)

Vice President	$171,500
Senators	133,600
Members of the House of Representatives	133,600
Delegates to the House of Representatives	133,600
Resident Commissioner from Puerto Rico	133,600
President pro tempore of the Senate	148,400
Majority leader and minority leader of the Senate	148,400
Majority leader and minority leader of the House of Representatives	148,400
Speaker of the House of Representatives	171,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1993)

Chief Justice of the United States	$171,500
Associate Justices of the Supreme Court	164,100
Circuit Judges	141,700
District Judges	133,600
Judges of the Court of International Trade	133,600

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

(Effective on January 1, 1993)

PART I—MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24****	Over 26
COMMISSIONED OFFICERS															
O-10**	$6655.20	$6889.20	$6889.20	$6889.20	$6889.20	$7153.50	$7153.50	$7549.80	$7549.80	$8089.80	$8089.80	$8631.60	$8631.60	$8631.60	$9169.50*
O-9	5898.00	6052.50	6181.50	6181.50	6181.50	6338.70	6338.70	6602.40	6602.40	7153.50	7153.50	7549.80	7549.80	7549.80	8089.80
O-8	5342.10	5502.30	5632.80	5632.80	5632.80	6052.50	6052.50	6338.70	6338.70	6602.40	6889.20	7153.50	7329.90	7329.90	7329.90
O-7	4438.80	4740.60	4740.60	4740.60	4953.30	4953.30	5240.40	5240.40	5502.30	6052.50	6468.90	6468.90	6468.90	6468.90	6468.90
O-6	3290.10	3614.70	3851.70	3851.70	3851.70	3851.70	3851.70	3851.70	3982.50	4612.20	4847.70	4953.30	5240.40	5417.70	5683.50
O-5	2631.30	3089.40	3303.30	3303.30	3303.30	3303.30	3403.20	3586.50	3826.80	4113.30	4348.80	4480.80	4637.40	4637.40	4637.40
O-4	2217.90	2700.90	2881.20	2881.20	2934.60	3063.90	3273.00	3456.90	3614.70	3773.40	3877.50	3877.50	3877.50	3877.50	3877.50
O-3***	2061.00	2304.60	2463.60	2725.80	2856.30	2958.60	3118.80	3273.00	3353.40	3353.40	3353.40	3353.40	3353.40	3353.40	3353.40
O-2***	1797.30	1962.60	2358.30	2437.50	2488.20	2488.20	2488.20	2488.20	2488.20	2488.20	2488.20	2488.20	2488.20	2488.20	2488.20
O-1***	1560.60	1624.20	1962.60	1962.60	1962.60	1962.60	1962.60	1962.60	1962.60	1962.60	1962.60	1962.60	1962.60	1962.60	1962.60
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-3	-	-	-	$2725.80	$2856.30	$2958.60	$3118.80	$3273.00	$3403.20	$3403.20	$3403.20	$3403.20	$3403.20	$3403.20	$3403.20
O-2	-	-	-	2437.50	2488.20	2567.10	2700.90	2804.40	2881.20	2881.20	2881.20	2881.20	2881.20	2881.20	2881.20
O-1	-	-	-	1962.60	2097.00	2174.40	2253.00	2331.30	2437.50	2437.50	2437.50	2437.50	2437.50	2437.50	2437.50

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* Basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,016.80 per month.

** While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $10,117.50*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

*** Does not apply to commissioned officers who have been credited with over 4 years' active duty service as an enlisted member or warrant officer.

**** Section 4402 of Public Law 102-484 authorizes, for months before October 1, 1995, temporary rates of monthly basic pay for members of the uniformed services in pay grades O-6, W-5, W-4, E-9, E-8, and E-7 who have over 24, but under 26, years of service.

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24****	Over 26
							WARRANT OFFICERS								
W-5	-	-	-	-	-	-	-	-	-	-	-	$3583.80	$3719.70	$3827.30	$3988.50
W-4	$2100.00	$2253.00	$2253.00	$2304.60	$2409.30	$2515.50	$2621.10	$2804.40	$2934.60	$3037.50	$3118.80	3219.60	3327.30	3430.90	3586.50
W-3	1908.60	2070.30	2070.30	2097.00	2121.30	2276.70	2409.30	2488.20	2567.10	2643.60	2725.80	2832.00	2934.60	2934.60	3037.50
W-2	1671.60	1808.40	1808.40	1861.20	1962.60	2070.30	2148.90	2227.80	2304.60	2385.60	2463.60	2541.30	2643.60	2643.60	2643.60
W-1	1392.60	1596.90	1596.90	1730.10	1808.40	1886.10	1962.60	2043.90	2121.30	2200.50	2276.70	2358.30	2358.30	2358.30	2358.30
							ENLISTED MEMBERS								
E-9*	-	-	-	-	-	-	$2443.20	$2497.80	$2554.50	$2613.00	$2671.50	$2723.40	$2866.20	$2977.70	$3144.90
E-8	-	-	-	-	-	$2048.70	2107.20	2162.70	2218.80	2277.60	2329.80	2387.10	2527.20	2639.70	2808.60
E-7	$1430.10	$1544.10	$1601.10	1657.20	1713.60	1768.20	1824.90	1881.90	1967.10	2022.90	2079.00	2106.00	2247.30	2359.30	2527.20
E-6	1230.60	1341.30	1397.10	1456.50	1511.10	1565.40	1623.00	1706.70	1760.10	1817.10	1844.70	1844.70	1844.70	1844.70	1844.70
E-5	1079.70	1175.40	1232.70	1286.10	1370.70	1426.50	1482.90	1537.50	1565.40	1565.40	1565.40	1565.40	1565.40	1565.40	1565.40
E-4	1007.10	1063.80	1126.20	1213.20	1261.20	1261.20	1261.20	1261.20	1261.20	1261.20	1261.20	1261.20	1261.20	1261.20	1261.20
E-3	948.90	1001.10	1041.00	1082.10	1082.10	1082.10	1082.10	1082.10	1082.10	1082.10	1082.10	1082.10	1082.10	1082.10	1082.10
E-2	913.20	913.20	913.20	913.20	913.20	913.20	913.20	913.20	913.20	913.20	913.20	913.20	913.20	913.20	913.20
E-1**	814.80	814.80	814.80	814.80	814.80	814.80	814.80	814.80	814.80	814.80	814.80	814.80	814.80	814.80	814.80
E-1***	753.60	-	-	-	-	-	-	-	-	-	-	-	-	-	-

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* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,822.90, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

**** Section 4402 of Public Law 102-484 authorizes, for months before October 1, 1995, temporary rates of monthly basic pay for members of the uniformed services in pay grades O-6, W-5, W-4, E-9, E-8, and E-7 who have over 24, but under 26, years of service.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

PART II--BASIC ALLOWANCE FOR QUARTERS RATES

PAY GRADE	Without dependents		With dependents
	Full rate*	Partial rate**	
COMMISSIONED OFFICERS			
O-10	$714.90	$50.70	$879.60
O-9	714.90	50.70	879.60
O-8	714.90	50.70	879.60
O-7	714.90	50.70	879.60
O-6	655.80	39.60	792.30
O-5	631.50	33.00	763.50
O-4	585.30	26.70	673.20
O-3	469.20	22.20	557.10
O-2	372.00	17.70	475.80
O-1	313.20	13.20	425.10
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER			
O-3	$506.40	$22.20	$598.50
O-2	430.50	17.70	540.00
O-1	370.20	13.20	498.90
WARRANT OFFICERS			
W-5	$594.30	$25.20	$649.50
W-4	528.00	25.20	595.50
W-3	443.70	20.70	546.00
W-2	393.90	15.90	502.20
W-1	330.00	13.80	434.40
ENLISTED MEMBERS			
E-9	$433.80	$18.60	$571.50
E-8	398.40	15.30	526.80
E-7	339.90	12.00	489.30
E-6	307.80	9.90	452.40
E-5	283.80	8.70	406.50
E-4	246.90	8.10	353.70
E-3	242.40	7.80	329.10
E-2	197.10	7.20	313.20
E-1	175.20	6.90	313.20

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* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by title 37, United States Code, and Part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or (c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(c)(2) and Part IV of Executive Order 11157, as amended.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 4)

PART III--BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers (per month) $139.39

Enlisted Members (per day):

	E-1 (less than 4 months' active duty)	All Other Enlisted
When on leave or authorized to mess separately	$6.14	$6.65
When rations in-kind are not available	6.93	7.50
When assigned to duty under emergency conditions where no messing facilities of the United States are available . . .	9.19	9.94

PART IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, is $543.90.

SCHEDULE 9--INTERIM GEOGRAPHIC ADJUSTMENTS FOR CERTAIN EMPLOYEES IN SPECIFIED AREAS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1993)

AREA	ADJUSTMENT RATE
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA Consolidated Metropolitan Statistical Area	8%
San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area	8%
Los Angeles-Riverside-Orange County, CA Consolidated Metropolitan Statistical Area	8%

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Reader Aids

Federal Register

Vol. 57, No. 252

Thursday, December 31, 1992

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447
Code of Federal Regulations	
Index, finding aids & general information	523–5227
Printing schedules	523–3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230
Presidential Documents	
Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230
The United States Government Manual	
General information	523–5230
Other Services	
Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

56803–56962	1
56963–57094	2
57095–57320	3
57321–57644	4
57645–57874	7
57875–58120	8
58121–58398	9
58399–58696	10
58697–58960	11
58961–59274	14
59275–59800	15
59801–59894	16
59895–60072	17
60073–60448	18
60449–60714	21
60715–60974	22
60975–61248	23
61249–61556	24
61557–61758	28
61759–62144	29
62145–62466	30
62467–62920	31

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305 61759
310 61759

3 CFR

Proclamations:
6512 57643
6513 58695
6514 58697
Proclamations:
6282 (See Proc. 6515) 60053
6343 (See Proc. 6515) 60053
6445 (See Proc. 6515) 60053
6455 (See Proc. 6515) 60053
6515 60053
6516 61245
6517 61757
Executive Orders:
12543 (Continued by Notice of December 14, 1992) 59885
12544 (Continued by Notice of December 14, 1992) 59895
12674 (See OGE final rule of Dec. 10, 1992) 58399
12731 (See OGE final rule of Dec. 10, 1992) 58399
12757 (Amended by Executive Order 12823) 57645
12823 57645
12824 58121
12825 60971
Administrative Orders:
Memorandums:
July 25, 1961 (Rescinded by Memorandum of November 30, 1992) 57093
November 30, 1992 57093
Notices:
December 14, 1992 59895
Presidential Determinations:
No. 93–5 of December 15, 1992 62149
No. 93–6 of December 18, 1992 62465
Proclamations:
6518 62145

5 CFR

317 61249
430 60715
432 60715
530 .... 59275, 61967
532 .... 57875, 59277, 61769, 61770, 62505
540 60715
550 .... 59277, 62505
551 .... 59277, 62505
591 58123
835 61771
1650 .... 57321, 60073
2634 62605
2637 62467
2638 .... 58399, 61612
Proposed Rules:
591 58554
872 58159
873 58159

7 CFR

2 .... 57647, 58961
16 58124
68 58897
180 60073
272 60074
273 60074
301 57322
321 62468
354 62468
425 56963
736 57647
800 .... 58961, 58967
810 .... 58961, 58967
905 62152
907 .... 56803, 58127, 59280, 58898, 62153, 62154
910 .... 56806, 58128, 59282, 62151, 62156
917 62157
920 .... 62157, 62158
932 .... 62160, 62163
944 .... 62160, 62163
945 62165
948 61773
955 62168
959 61774
967 61776
982 62170
987 .... 61777, 62168
1006 61779
1012 61779
1013 61779
1421 62473
1924 57095
1930 59900
1942 57876
1944 .... 58042, 59900, 62172
1951 59900
1955 60084
1956 60084
1962 60084
1965 .... 59900, 60084, 61489

Proposed Rules:

17	59941
271	60489
273	60489
301	57379
354	56862, 62485
920	56864
927	57694
981	56866
985	57695
993	62240
1040	58418
1106	61839
1131	62241
1250	60139
1435	62486
1755	62490
1944	62243

8 CFR

238	59906
245	56807

Proposed Rules:

3	60740, 61587
235	60741

9 CFR

11	62173
51	60086
54	58130
75	57335
94	57337, 62176
145	57338, 58552
147	57338
162	60086

Proposed Rules:

92	62501
97	62485
317	57390
318	57390
381	57390

10 CFR

19	61780
20	57649, 57877
34	61785
35	61785
50	61785
52	60975
73	61785
110	61785, 62605

Proposed Rules:

Ch. I	58727
2	61013
20	58727
34	57392
52	61342
54	58730

11 CFR

201	58133

Proposed Rules:

100	56867
114	56867

12 CFR

5	58972
34	62890
203	56963
206	60086
208	60718, 62177, 62180, 62890
215	60979
225	60718, 62177, 62180
264	62183
303	59284
335	58136
365	62890
506	61251
545	62474, 62890
563	61251, 62890
614	58860
625	60108
910	62183
1503	61251
1680	56968
702	60720
1102	60722
Ch. XIII	60112

Proposed Rules:

9	57971, 60742
202	57697
215	61016
226	58159
327	62502
357	60140
621	58972
701	56868
705	56868
707	60141
932	58732
933	58732
1503	61342

13 CFR

101	61255
120	62474
121	62477

Proposed Rules:

121	59312, 62515

14 CFR

21	57656
25	57656
39	57096, 57280, 57658, 57879, 57908, 58973, 59312, 59801, 60113, 60277, 60980, 61255, 61557, 61558, 61788, 61789, 61791, 61793
61	60725
71	57660, 57664, 57909, 57910, 58137, 58138, 58421, 58699, 59286, 59287, 60449, 60728, 60730, 60981, 60982, 61257, 62605
73	58285
91	60725
95	56814
97	56822, 56823, 58700–58702
121	60725
149	60725
153	60725
154	60725
199	60725
228	60725
235	60725
270	60725
292	60725
310a	60725
320	60725
326	60725
384	60725
387	60725
1214	61794

Proposed Rules:

39	56873, 57392, 57395, 57702, 57705, 57706, 58162, 58164, 58751, 58752, 58998 58999, 59001, 60142, 60146, 60743, 60747, 61587, 61840, 61842, 61844–61846
61	59548
63	59548
65	59548
71	56875, 57708, 57709, 57971–58116, 58165, 58167, 58754, 59312, 60748, 61343, 61344, 61848
121	59458, 59477, 59778
129	59473
135	59458
234	58755

15 CFR

771	61259
778	60122
779	60122
785	61259
786	61259
799	61259
801	59288
806	60731

16 CFR

305	58976
1211	60449

Proposed Rules:

1700	57397

17 CFR

1	58703
33	58976
140	61290
143	61291
230	56826
239	56826
240	56973
270	56826
274	56826

Proposed Rules:

1	62244
4	58760
34	58422
35	58423
150	58760
156	57116
230	57397
240	57027, 57397, 57710
260	57713

18 CFR

2	58168, 59289
34	58168
35	58168, 59289
41	58168
50	59289
131	58168, 59289
141	59289
161	58978
250	58978
284	57911, 57952
292	58168, 59289
294	58168
300	59289
382	58168
385	58168, 59289
401	59907, 60470
1301	59802, 59908

Proposed Rules:

11	61850
154	56876
284	57031

19 CFR

177	58706

20 CFR

404	57665, 59909, 59911, 61795
614	59798
626	62004
627	62004
628	62004
629	62004
630	62004
631	62004
637	62004

21 CFR

16	58400
73	61292
146	57666
172	57960
184	60470
201	58356
310	58356, 60415, 60246, 60430
314	58942, 61489, 61612
316	62076
341	58356
369	58356
510	61796
601	58942, 61489
807	58400
814	58400
860	58400
861	58400
895	58400
1240	57343
1401	59803

Proposed Rules:

341	58378
812	60491
872	56876
1301	60148
1311	60148

22 CFR

51	59807

Proposed Rules:

121	61589

23 CFR

1	60725
12	60725
17	60725
140	60725
470	60725
490	60725
642	60725
650	60725
655	60725
661	60725
666	60725
770	60725
920	60725
922	60725
1204	56991

24 CFR

24	58326
25	58326
30	58326
92	58862, 60960
200	58326
201	62187
202	58326
203	58326, 62187
204	58326
206	58326
207	58326
213	58326
220	58326
221	58326

222....58326
226....58326
227....58326
233....58326
234....58326, 62187
235....62452
237....58326
240....58326
241....58326
242....58326
244....58326
248....57312
571....58139
574....61736
700....58042
990....61226
2003....62142
3500....56856
Proposed Rules:
251....59314
252....59314
255....59314
905....59316

26 CFR

1....57280, 57531, 57668, 58706, 58983, 59915, 60126, 60473, 60474, 60568, 60733, 60983, 61293, 61313, 61797, 61805, 61811, 61813, 62192, 62198
31....61612
301....58706, 58984, 60846, 61293
602....57279, 60473, 60474, 60983, 61293, 61313, 61813, 62198
Proposed Rules:
1....56877, 57399, 57531, 57971, 57979, 59003, 59319, 59324, 59327, 60029, 60495, 60749, 60846, 61017, 61019, 61345, 61353, 61852, 62250, 62251, 62266, 62274, 62526
15a....62274
20....57399
25....57399
26....61353, 61356
31....58423
301....58760, 61020, 61035, 61356, 61373
602....57399, 59003

27 CFR

Proposed Rules:
9....58763

28 CFR

2....59915
68....57669
543....62460
Proposed Rules:
5....62274
345....59866
545....59866

29 CFR

470....58285
578....57280
1601....60995
1926....61860
2601....61323
2616....59206
2617....59206
2619....59292, 59293
2621....59294
2626....59295
2640....59808, 59820
2642....59808
2646....59812
2649....59820
Proposed Rules:
1....57033, 57034
2606....59003
2612....59003
2615....59003
2616....59003
2622....59003
2623....59003

30 CFR

7....61182
18....61182, 61210
57....61210
75....61210
100....60690, 61612
218....62200
230....62200
400....59916
609....61831
651....61831
914....59916, 62207
917....58139, 59919
920....59922, 62220
938....62222
Proposed Rules:
14....61254
18....61254
75....61254, 61538
401....59941
840....60408
842....60408
870....62116
914....57039
917....58169
920....62277
925....62278
926....59020
944....58144

31 CFR

205....60676
257....57344
500....58986, 62229
Proposed Rules:
10....57400, 60149, 60278
209....57400

32 CFR

287....61234
367....58986
701....57961
706....59924, 59926
Proposed Rules:
199....58427
505....62531
1636....62533

33 CFR

24....60725
100....58144, 60126, 60995
105....60725
117....57098, 57962, 57963, 58145, 58710
155....60402
157....60402
165....56991, 57099, 57100, 58146, 58988, 59927, 60127, 60996
334....58098
Proposed Rules:
117....57039, 58172, 59943, 59944

34 CFR

12....60934
206....60406
280....61508
316....62094
318....62094
319....62094
600....57304
668....57304, 60032
674....60700
675....60700
676....60700
682....60278
Proposed Rules:
5b....59860
21....58100
Ch. VI....62533

36 CFR

7....58711
1258....60997
Proposed Rules:
7....60496
704....57979
1191....60612
1222....57042
1230....57042

37 CFR

201....60481, 61832
202....60481
304....60954
Proposed Rules:
304....58552

38 CFR

3....58992, 59296, 60734
21....57101, 57107, 60735
36....61235
Proposed Rules:
21....58435

39 CFR

601....60997
Proposed Rules:
111....58765
3001....57124

40 CFR

22....60128
52....57345, 58969, 58991, 58993, 59300, 59928, 60425, 61834
61....60998
62....56857
63....61970
70....57347
81....59300
88....60038
122....60444
124....60128
131....60848
180....58147, 58149, 58384, 59822, 59824, 60999, 61002
185....59824
186....59824
261....57673, 61492
264....61492
265....61492
271....59825, 60129, 61003, 62231
300....61004, 61005, 62231
302....61492
374....61612
Proposed Rules:
Ch. I....57402, 61866
52....57045, 57047, 57715, 59022, 59327, 60149, 61036, 62535
55....62537
60....62798
61....56877, 57403, 60778
63....57534, 62608
76....61489
80....57980
82....58644
85....61867
86....61867
180....59829, 62540, 62542
260....61376
261....61376
262....61376
264....61376
268....61376
281....61376
300....56882, 61867
414....56883
455....56883
600....61867

41 CFR

101–2....56993
101–17....56994
101–34....59936
101–38....60132
201–38....60132

42 CFR

52a....61005
62....56994
400....56996
401....56996
405....56996, 57675
406....58716
410....57675
414....57109, 57675
Proposed Rules:
417....59024
421....57125
434....59024
435....57403
456....61614
483....61614
1003....59024

43 CFR

5400....62232
5460....62232
5470....62232
8360....61242
Public Land Order:
6954....61236

44 CFR

64....60486
65....59303, 59304
67....59305
Proposed Rules:
67....59329, 59946

45 CFR

302....61559
303....61559
1303....59260
1304....58084
1306....58084
Proposed Rules:
2500....60779
2501....60779
2502....60779

2503....60779
2504....60779
2505....60779
2506....60779

46 CFR

30....60402
32....60402
69....59937
70....6402
90....6402
154a....60725
170....58406
172....60402
237....60725
250....60725
262....60725
278....60725
279....60725
292....60725
294....60725
310....60725
316....60725
318....60725
319....60725
320....60725
321....60725
322....60725
323....60725
333....60725
334....60725
540....62479

Proposed Rules:

16....59752, 59778
28....57129, 60158

47 CFR

2....60132
22....56859
61....60735, 62481
63....57964
64....62481
65....62481
69....56998, 62481
73....56860, 56999, 57347, 57438, 58717, 60737, 62482, 62483
76....61009
80....57000, 61011
90....60132

Proposed Rules:

Ch. I....58436, 60501, 60737, 62543
2....57049, 57408, 57717
18....59040
36....56888, 58767
61....56888, 58767, 61591
63....57717
64....56888, 58767, 62544
69....56888, 58767, 61591
73....56894, 57051, 57409, 57411, 58769, 59330, 60782, 60783, 61037, 61591, 62545
76....59331, 60501, 61038, 62282
80....57717
90....57717
97....59950

48 CFR

Ch. I....60570
Ch. 220....61152
4....60572, 60573
5....60573
7....60574
8....60576
9....60576
13....60577
15....60578, 60579, 60610
19....60580, 60581, 60610
22....60581
25....60582, 60583
31....60583, 60610
33....60584, 60610
37....60583
42....60587
45....60587, 60589
51....60590
52....60572, 60574, 60578, 60581, 60583, 60587, 60610
53....60590
501....61583
502....61583
504....61583
508....61583
510....61583
515....61583
517....59938
530....61583
533....61583
552....59938
803....58717
852....58717
913....57638
922....57638
952....57638
970....57638
1801....58718
1804....58718, 60737
1805....58718
1806....58718
1807....58718
1809....58718
1815....58718
1817....58718
1827....58718
1828....58718
1833....58718
1835....58718
1837....58718
1839....58718
1842....58718
1845....58718
1849....58718
1852....58718
1853....58718
1870....58718
2401....59786
2402....59786
2403....59786
2405....59786
2406....59786
2409....59786
2413....59786
2414....59786
2415....59786
2416....59786
2419....59786
2425....59786
2426....59786
2428....59786
2432....59786
2433....59786
2436....59786
2437....59786
2446....59786
2452....59786

Proposed Rules:

48....59274
219....56895, 60503
252....56895, 60503
6101....60783
9903....60503
9905....60503

49 CFR

1....62483
81....60725
101....60725
171....59308, 60725
172....59308
174....59308
177....59308
527....60725
571....57000, 57020, 58150, 58406, 60725
590....60725
603....60725
623....60725
635....60725
670....60725
1033....61584
1180....57112, 61585

Proposed Rules:

23....58288
40....59409
61....59458
63....59458
65....59458

121....59458, 59473, 59477, 59778
129....59458
135....59473
199....59712, 59720, 59778
217....58436, 59608
219....59588, 59608, 59778
220....58436
232....62546
Ch. III....60784
350....59516
382....59516, 59567, 59778
383....59616
391....59539
392....59516
395....59516
Ch. V....61869
523....61377
525....61377
533....61377
537....61377
571....58437, 58444, 59041, 59043
572....58444
585....59043
653....59660, 59778
654....59646
826....60785, 61967
1057....61870
1152....59951
1201....59951

50 CFR

17....57348, 59236, 59244
217....60135
222....60135
227....57348, 57968, 60135
285....59310
625....57358, 58150
641....62235, 62237
642....58151
663....57377
671....57112, 60029
672....61326, 61585
675....57377, 57692, 58157, 58726, 61326
672....56860

Proposed Rules:

17....58770, 58774, 58779, 59053, 59066, 59951, 59970, 60159, 60161
18....62283
32....58108, 58930, 62289
222....60162
226....57051, 57981
611....57718, 57982
625....61389
641....57129
649....58781
651....58173
655....60786
658....58175
663....56897
669....58782
672....57130, 57726, 57982, 59072, 61870
675....57130, 57718, 57726, 59072, 60788, 61870
676....57130, 61870

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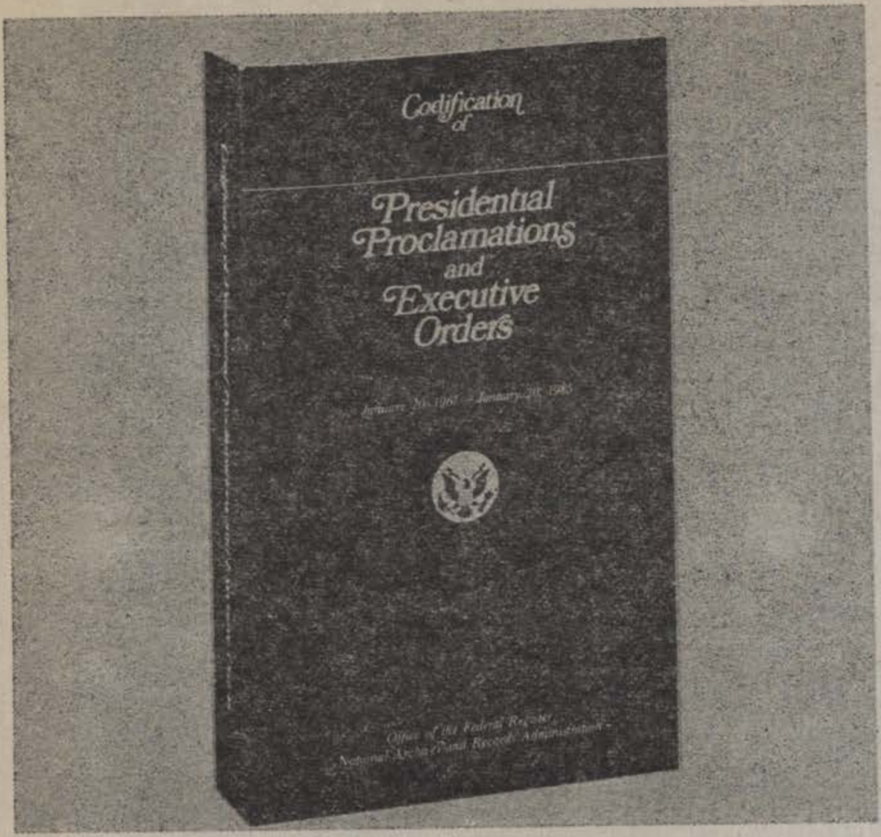
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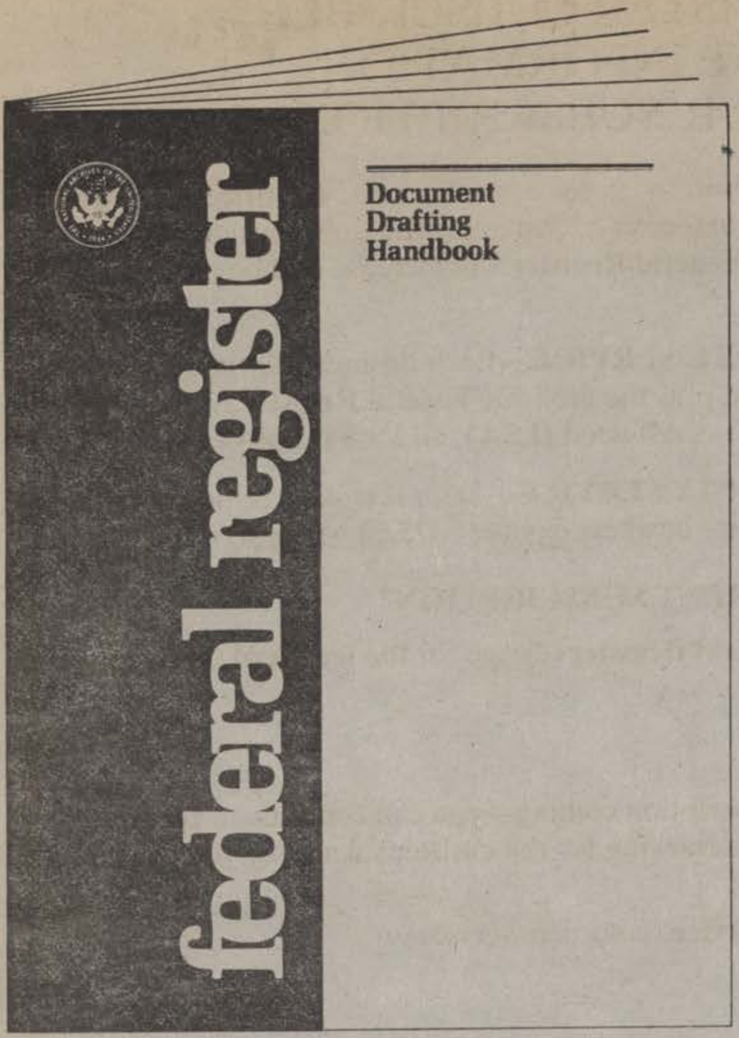

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